

EXHIBIT A

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
Fair Isaac Corporation,) File No. 16-cv-1054 (DTS)
a Delaware Corporation,)
)
Plaintiff,)
)
v.)
)
Federal Insurance Company,) Courtroom 14W
an Indiana corporation,) Minneapolis, Minnesota
and ACE American Insurance) Thursday February 16, 2023
Company, a Pennsylvania) 9:12 a.m.
Corporation,)
)
Defendants.)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME II)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

* * *

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1 (IN OPEN COURT)

2 (Jury seated)

3 (9:12)

4 THE COURT: Good morning, everyone. Please be
5 seated.

6 Mr. Hinderaker, are you ready?

7 MR. HINDERAKER: I am, Your Honor.

8 THE COURT: All right. You may proceed. Thank
9 you.

10 A JUROR: Your Honor, our screen doesn't work.

11 THE COURT: It's on now?

12 A JUROR: Yes.

13 THE COURT: Everyone else, your screens are all
14 up? Okay. Good.

15 MR. HINDERAKER: Good morning, everyone.

16 Yesterday Judge Schultz mentioned about the rule
17 of law, and for me, that's the very best reason that there
18 is for me to be a lawyer. I know that all of us have
19 something else to do than be here, but I do hope that
20 regardless of the outcome, regardless of -- for my client or
21 against my client, regardless of the outcome, that after our
22 weeks of work together, you think that this effort and this
23 experience has been worthwhile as well because we all are at
24 the moment participating together in the rule of law of this
25 country.

1 That said, you're wondering, why did FICO bring
2 this lawsuit? And you'll be hearing a lot about a product
3 called Blaze Advisor to explain the answer to that question.

4 Blaze Advisor was first conceived in 1996, and at
5 the time, it was a revolutionary product. Now 27 years of
6 improvements later, 27 years of enhancements later, many
7 consider Blaze Advisor to be the leading software product of
8 its kind.

9 Relevant to this lawsuit, the software code of
10 Blaze Advisor is protected by 13 copyrights. FICO brought
11 this lawsuit because Blaze Advisor was used without FICO's
12 permission for years and FICO seeks to be compensated for
13 the years of that unlicensed use.

14 Also, defendants should not benefit from
15 infringing FICO's copyrights. And the Court, Judge Schultz,
16 will ask your advice at the end of the trial for the amount
17 of money to be taken away from defendants because Blaze
18 Advisor copyrights were infringed for four years. I want to
19 be clear, that is not compensation to FICO. It is taking
20 away the benefit from the infringement that is provided by
21 the copyright laws. FICO does seek to have that benefit
22 taken away from the defendants.

23 So in sum, the evidence will show, and I suggest,
24 in sum, the evidence will show the indifference the
25 defendants had for FICO's rights and the evidence will show

1 that they knowingly infringed FICO's copyrights.

2 Who is Fair Isaac? You heard yesterday that Fair
3 Isaac is also called FICO. It was founded in 1956. Today
4 it considers itself, and many agree, a world leader in the
5 design and development of predictive analytic software and
6 decision management software. FICO software is now in 90
7 countries around the world, when businesses seek to make
8 better decisions to drive higher levels of growth and
9 profitability and to increase customer satisfaction.

10 So let me turn to Blaze Advisor. It is a software
11 product, and it takes the company's know-how and makes that
12 know-how operational. It both manages the decision-making
13 of a business so that better decisions are made, and it also
14 automates those decisions so that high-volume, operational
15 decisions are made faster and smarter. In short, Blaze
16 Advisor powers decision-making.

17 Back in 1996, when Blaze Advisor was first
18 conceived, about 16 people worked full-time for two years
19 writing software code just to create the beta version to
20 first put out into the marketplace.

21 Today, now 27 years later, about 60 people work on
22 Blaze Advisor software. There are three million lines of
23 software code in Blaze Advisor, and it is a bit difficult to
24 imagine how big that is, but there are about 57 lines of
25 code on a page. And if there's 3 million lines of code,

1 there is more than 52,000 pages to record 3 million lines of
2 code. And that 52 -- almost 53,000 pages, if you take a
3 ream of paper of being about two and a half inches, almost
4 52,000 pages are 20-feet high. That's the quantity of
5 software code that makes up Blaze Advisor.

6 You'll hear a lot about the license agreement, and
7 that is one way in which FICO protects the Blaze Advisor
8 software under the conditions and limitations of the license
9 agreement itself.

10 The other way in which Blaze Advisor is protected
11 is by copyright law, and this is a graphic of the
12 registrations with the United States Copyright Office that
13 protect Blaze Advisor. It is noteworthy that the defendants
14 have not challenged the validity of any of those
15 registrations.

16 So what did the defendants do with Blaze Advisor?
17 They used Blaze Advisor to sell more insurance, to sell more
18 profitable insurance, and to avoid selling unprofitable
19 insurance. In this case, for example, you will hear that
20 Blaze Advisor was used by the defendants to automatically
21 decide whether to offer a potential customer an insurance
22 policy. The software did that. To automatically decide the
23 scope of coverage the policy should have. The software did
24 that. And to automatically set the price at what premium
25 should the policy be offered. Again, the software did that.

1 In insurance language, that's called underwriting.
2 And the evidence will show that Blaze Advisor was used
3 without any -- was used for underwriting purposes, as well
4 as many others, and the evidence will show that Blaze
5 Advisor was used without any right to do so, and the
6 infringement of FICO's copyright was connected to \$5 billion
7 of insurance sold per year.

8 I'm going to introduce you to Chubb Limited in a
9 bit, but this is what Chubb Limited said in 2018 to its
10 shareholders, "Technology is a competitive weapon." Blaze
11 Advisor was one of the technologies the defendants used to
12 sell insurance.

13 Now, let me go back in time. For ten years, there
14 was a good relationship between FICO and Chubb & Son. This
15 lawsuit was commenced in 2016. So let me review the
16 evidence that was -- the relationship the parties had before
17 the lawsuit began.

18 This is the front page of the software license and
19 maintenance agreement between FICO and the client, Chubb &
20 Son, a division of Federal Insurance. You will see
21 throughout the documents that the client is also identified
22 as Chubb & Son.

23 Why is Federal a defendant in this lawsuit?
24 Federal is a defendant in this lawsuit because it is
25 responsible for the actions of its division, Chubb & Son,

1 the license agreement being with Chubb & Son. And this
2 relationship, as I said, was a good one for ten years. So
3 what happened? Why the lawsuit?

4 In January of 2016, a different very large
5 insurance company called ACE American acquired the Chubb
6 Corporation. That acquisition created the largest publicly
7 traded property and casualty insurer in the world, and that
8 new company had annual revenues at the time of about 30
9 billion a year. And this acquisition was the largest
10 insurance company merger in history.

11 Chubb & Son was no longer a part of the Chubb
12 Corporation, and because of the acquisition, the Chubb
13 Corporation ceased to exist. So now ten years later we have
14 the Chubb & Son, client of the license agreement, being part
15 of a different organization.

16 That triggered some provision in the license
17 agreement. One of the ways the license agreement protects
18 FICO's investments and it's ownership of Blaze Advisor is by
19 a provision called the no-assignment provision. You'll be
20 seeing a lot of that. It is paragraph 10.8 of the license
21 agreement. And 10.8 states that when there is an
22 assignment, it must be with FICO's prior consent. And 10.8
23 goes further to say that certain events will be considered
24 assignment events, and they must also have FICO's consent.
25 I will be going into those provisions in some more detail in

1 a moment.

2 There was one provision in the standard language
3 of 10.8 that Chubb wanted in the negotiations that FICO
4 agreed to, and that was that FICO's consent would not be
5 unreasonably withheld. It wasn't a hard addition to agree
6 to, and that is the only change in that paragraph that is
7 not standard FICO language.

8 In overview, the defendants will show that those
9 protections of 10.8 that FICO had over its ownership and
10 investment were ignored. The Defendant Chubb & Son did not
11 care to let FICO revisit the fairness of the original
12 license fee now that Blaze Advisor was going to be used in a
13 \$30 billion organization, one that was twice the size of the
14 organization of the original license agreement.

15 But that is one of the commercial purposes of the
16 license agreement itself. It permits FICO to revisit the
17 fairness of the original license agreement when the
18 circumstances surrounding the client go through a
19 significant change. At the outset, the parties sought to
20 negotiate a business resolution. That did not happen.

21 Let me show you the chronology of the events that
22 I'm talking about now. This license agreement was entered
23 into in 2006. There was a good relationship. The
24 acquisition of the Chubb Corporation by ACE American,
25 January 16, 2016. And because FICO's prior written consent

1 was not requested, let alone given, but not requested, there
2 was a notice of breach letter that went out on January 27,
3 2016. As I mentioned in the beginning, the parties wanted
4 to reach a business resolution, and 30 days was set for that
5 negotiation.

6 Sixty days later the license agreement was
7 terminated by a letter dated March 31st. And at that point,
8 Chubb & Son was no longer licensed, and at that point, FICO
9 expected all use of Blaze Advisor to stop because that's
10 what the license agreement says. When there is no license
11 agreement, there is no permission. All use of Blaze Advisor
12 will immediately stop. But there was indifference to that
13 as well because the use did not stop.

14 So let me turn now to some history and introduce
15 you to some of the parties that you'll be hearing -- or the
16 organizations that you'll be hearing throughout the case.

17 The Chubb Corporation, Federal Insurance Company,
18 how it fit in that, and Chubb & Son the division. At the
19 time of the original license agreement, this is a graphic of
20 the Chubb Corporation. It is a holding company with many
21 other insurance companies underneath it. It was the
22 eleventh largest property and casualty insurance company in
23 the United States at the time, and its annual revenue was 12
24 billion.

25 Federal was one of the main insurance company

1 subsidiaries of the Chubb Corporation, and Federal itself
2 owned many other insurance company subsidiaries. The
3 evidence will show that Chubb & Son, the division, was the
4 operating unit of Federal. The evidence will also show that
5 Chubb & Son, the division, this operating unit, managed the
6 business of many other insurance companies in the Chubb
7 Group of Insurance Companies.

8 So what does it mean to be a manager? Chubb &
9 Son, as a manager, did all the things necessary for other
10 insurance companies to issue policies in their names. Why
11 was Chubb & Son the one that did all those things necessary
12 so a policy could be issued in a different insurance
13 company's name? Because in many instances, those other
14 insurance companies had no employees. Chubb & Son provided
15 all the services so that policies could have the name on the
16 top but be issued without employees.

17 In other instance, it's cost-effective to take the
18 operations of many insurance companies and have Chubb & Son,
19 the division, do all the work necessary for those companies
20 to sell insurance.

21 That was the role of manager, and that was what
22 Chubb & Son did during the license period to using Blaze
23 Advisor in connection with selling insurance of many
24 companies.

25 How did this relationship with FICO begin? It

1 began in -- well, it began in 2006 with the license
2 agreement, but the warmup, if you will, is this
3 February 2006 request for information. It comes from Chubb
4 & Son, and as RFI says, Chubb & Son for itself and as
5 manager of its insurance company subsidiaries.

6 A request for information, or short, an RFI, is a
7 fairly typical way in which a business that's interested in
8 another company's product will ask, tell me about your
9 product. And the other side of the conversation, Chubb &
10 Son, reveals to FICO how it wants to use Blaze Advisor to
11 see if Blaze Advisor would fit its needs. So it's an
12 exploration. Will Blaze Advisor do what we want to
13 accomplish? And so Chubb & Son tells us why it's asking for
14 Blaze Advisor.

15 It tells us it's doing so because the key
16 strategic initiative in this area is expanding and growing
17 the business into mid-market and smaller accounts. It's why
18 they wanted to look at Blaze Advisor.

19 The RFI further explained that expansion into the
20 small and mid-markets was "viewed as a good opportunity"
21 because 85 percent of the target customers in that market
22 did not currently buy Chubb insurance products. Chubb & Son
23 tells us in the RFI that it was interested in Blaze Advisor
24 because it knew it had to use technology, Blaze Advisor
25 technology, to grow and expand into the small and

1 mid-markets.

2 So Chubb & Son entered into a license agreement
3 with FICO. Now, a license agreement is not a purchase. A
4 license agreement is permission. So Chubb & Son got FICO's
5 permission to use Blaze Advisor to automate decisions,
6 automate decision-making related to insurance and to sell
7 more insurance by growing into the small and mid-market.

8 So returning to the license agreement itself, June
9 of 2006. And this permission that FICO gave Chubb & Son and
10 that Chubb & Son agreed to abide by the terms and conditions
11 in the license agreement are set forth in the document
12 itself. So as -- you will be receiving this evidence, and
13 as you will read, in paragraph 2.1, that's the license
14 grant, and you will read that it is non-transferable, it is
15 nonexclusive so that FICO can license somebody else and it
16 is a limited license. Non-transferable, limited license and
17 for the internal business purposes of Chubb & Son only.
18 That was the scope of the permission.

19 You will hear that FICO's decades worth of
20 investment in Blaze Advisor depends on FICO having the
21 exclusive ownership and the exclusive control of its
22 software product, and the license then details more
23 restrictions to accomplish that goal.

24 There is a paragraph 3.1 called "Rights and
25 Restrictions." And in that paragraph, the client, Chubb &

1 Son, represents and warrants that it and its employees shall
2 not -- it's a promise -- shall not, and it details various
3 things that they promise they shall not do.

4 Relevant to this lawsuit, they promise that they
5 shall not, would not, disclose the Fair Isaac product or
6 permit the use or access of the Fair Isaac products by any
7 third party. Further, that provision goes on to say, they
8 would not permit use or access by any individual other than
9 an employee of Blaze Advisor. So that's an overview of the
10 original agreement in detail about the conditions and its
11 limitations.

12 Now, let me go through some more. That original
13 agreement was for, one, named application. We'll be hearing
14 a lot of testimony, you'll be hearing a lot of conversation
15 about an application. It begs the question, what is an
16 application? What does that mean?

17 The witnesses will explain that an application is
18 software. It's a computer program. We all have
19 applications on our phones. We call them apps. An
20 application is a computer program, and it's designed to
21 perform specific business functions.

22 If we just look at what Chubb & Son licensed Blaze
23 Advisor for at the outset, the application that Chubb & Son
24 had was called CSI Express. It's an application for
25 underwriting and automated policy renewals.

1 The business function that this application was
2 intended to accomplish was just that. That's why it's an
3 application. You will hear testimony that these
4 applications for particular business outcomes are made up of
5 many components. They are made up of many component of
6 software. The components of software together constitute
7 the application.

8 When Blaze Advisor is one of those software
9 components, the evidence will be that Blaze Advisor is both
10 the brains and the central nervous system of that
11 application. Blaze Advisor is the brains because it's the
12 software that automates the decision-making. Blaze Advisor
13 is the central nervous system because it's the software that
14 orchestrates all of the other components in the application,
15 telling them what to do, their functions. So it's both the
16 brains and the central nervous system. Without Blaze
17 Advisor in the application, it does not fulfill its business
18 purpose.

19 The software license agreement was amended twice.
20 Originally, a one named application, Chubb & Son wished to
21 have greater permission for the use of Blaze Advisor, and it
22 entered into Amendment Number One. And Amendment Number One
23 gave Chubb & Son permission to use Blaze Advisor for as many
24 applications as it wanted so long as those applications were
25 in the specialty insurance division. And then later Chubb &

1 Son wanted to expand the permission more, and we have
2 Amendment Number Two.

3 Amendment Number Two gave Chubb & Son the
4 permission to use Blaze Advisor in what is called an
5 enterprise-wide scope. So Chubb & Son can use it in a
6 division. Now Chubb & Son can use it enterprise-wide. But
7 it still -- Chubb & Son, the name of the client and the
8 scope of the client, hasn't changed.

9 So now Chubb & Son employees have permission to
10 use Blaze Advisor in connection with selling insurance of
11 whatever kind of insurance the companies that Blaze Advisor
12 managed sold. And throughout the lawsuit, we will call all
13 three of those together as the license agreement. And
14 you'll hear that over the years, the number of applications
15 that Chubb & Son used that contain Blaze Advisor grew and
16 grew.

17 Blaze Advisor functioned in these applications,
18 included automating decisions about underwriting guidance,
19 the renewal of policies and eligibility determinations, just
20 to name a few.

21 I mentioned that we had a good relationship for
22 ten years and FICO valued that relationship. Because of
23 that relationship, FICO was called upon to provide
24 professional services. Over the years, FICO provided about
25 15,000 hours of professional services to Chubb & Son to help

1 Chubb & Son implement the Blaze Advisor software into their
2 applications to sell insurance. FICO was called upon for
3 the more complex problems, and that's the way it should have
4 been.

5 The client relationship also gave FICO the
6 opportunities to license other products to Chubb & Son. And
7 Chubb & Son, from time to time, was interested in additional
8 FICO's technologies that they could use to tell insurance.

9 Then in January of 2016, the Chubb Corporation
10 ceased to exist and ACE American -- or ACE Limited acquires
11 it. ACE Limited acquired the Chubb Corporation but ACE
12 Limited chose to keep the reputation of Chubb, and so it
13 changed it's name from ACE Limited to Chubb Limited. And
14 now we turn to paragraph 10.8 that was triggered by that
15 acquisition.

16 As I said, the provision is a no assignment
17 provision. The commercial purpose, you will hear, is to
18 protect FICO's ownership and its rights to control the use
19 of Blaze Advisor. It is to give -- also to give FICO the
20 chance to revisit the fairness of its value-based pricing
21 when circumstances affecting the client significantly
22 change.

23 Who I do mean by value-based pricing? FICO prices
24 Blaze Advisor based upon the potential benefit that Blaze
25 Advisor gives to an organization. There is not a fixed

1 price for Blaze Advisor. The potential benefit of Blaze
2 Advisor for a big company is greater than it is for a small
3 company, and FICO's value-based pricing recognizes that
4 difference. So a larger company will pay a larger fee for
5 Blaze Advisor. A smaller company pays a smaller fee for
6 Blaze Advisor, based in accordance with the benefit. It's
7 the same software.

8 So the first sentence of paragraph 10.8 says,
9 "Neither party shall, without the prior written consent of
10 the other party, assign or transfer the agreement or any
11 part thereof."

12 FICO has the exclusive control of who can use
13 Blaze Advisor. And if Chubb & Son wants to -- Chubb & Son
14 has the license agreement and another company wants to
15 acquire that license agreement through transfer and
16 assignment, now Blaze Advisor with a different company, that
17 assignment or transfer requires FICO's prior consent.

18 You will hear that that did not happen in this
19 case. There is no assignment document between Chubb & Son,
20 the client, and ACE American. So the first sentence of
21 paragraph 10.8 does not have any application to the case,
22 but it sets up the paragraph as to what it's all about.

23 Then the second sentence. The second sentence
24 states, "Very certain and specific events that are
25 significant changes to the client as compared to when the

1 license agreement was originally made."

2 These aren't the assignments of the first sentence
3 where -- I'm sorry -- Chubb & Son to a different company.
4 These are circumstances where Chubb & Son itself has a
5 significant change to its circumstance. And these are also
6 deemed assignments so that they would be subject to this
7 section and they require FICO's prior consent to the use of
8 Blaze Advisor by the client under these very different
9 circumstances.

10 So what are those different circumstances? In the
11 event of a change of control of the client, and the evidence
12 will be that this happened here. The client, Chubb & Son,
13 as well as Federal, in which it was a division, became under
14 the control of a different company.

15 The second event, if the client is merged with,
16 acquired by or acquires another entity. That happened here
17 too. The acquisition of the Chubb Corporation by ACE
18 Limited was that acquisition. And Federal, which was owned
19 by the Chubb Corporation, became owned by a different
20 subsidiary of ACE Limited, so it went under an acquisition
21 as well as a change of control. That also deemed to be
22 assignment, although the client is still Chubb & Son; it's
23 just different now because of the change of control and
24 being part of a different organization.

25 And the third event, when the client undergoes a

1 reorganization or otherwise acquires the right to process
2 the business of another entity. That one did not happen
3 here. Chubb & Son did not reorganize itself or be able to
4 do -- process the business of -- process more business. The
5 evidence will be instead that in January of 2017, all the
6 employees of Chubb & Son became employees of ACE American.
7 So the client, Chubb & Son, in fact, lost its ability to
8 process business in the January -- as a consequence of the
9 acquisition. You will be asked to sort out and look at the
10 evidence in light of the words of paragraph 10.8.

11 But returning for a moment to the acquisition, we
12 have an event deemed to be an assignment. There is no
13 dispute that prior written consent for the assignment event
14 was never requested. And so we have the third sentence of
15 paragraph 10.8, "Any attempt to assign or transfer all or
16 any part of the agreement without first obtaining FICO's
17 consent is void and of no force or effect."

18 I mentioned value-based pricing, the opportunity
19 to revisit that pricing in fairness of that. And you'll
20 recall that in 2006 I mentioned that Chubb & Son was
21 licensed, and Chubb & Son was part of a \$12 billion group of
22 insurance companies. The value-based fee for that was based
23 upon that fact in 2006.

24 With the 2016 acquisition, Chubb & Son became part
25 of a different organization, and now that different

1 organization is a \$30 billion one. Standard FICO
2 value-based pricing is more for a \$30 billion company than
3 it is for a \$12 billion company.

4 Now, the acquisition of one company by another is
5 not uncommon. We heard examples of that yesterday. And the
6 evidence in this case will include the fact that FICO and
7 its client, and other clients, have had acquisition events,
8 and FICO and it's other clients have been able to come to
9 terms for FICO's consent to the continued use of Blaze
10 Advisor. But that did not happen here in this case, and
11 that's why we're together.

12 We are at the time now at this stage in the
13 chronology, we have the license agreement, the assignment
14 event, no request for our consent, and FICO sent a notice of
15 termination letter on January 27, 2016.

16 Tom Carretta was the author, and we should be
17 meeting with him -- or you should be being introduced to him
18 next week. That letter gave official notice of breach of
19 paragraph 10.8. The letter also requested, FICO wanted it,
20 information about the intentions to use Blaze Advisor so
21 FICO could have an informed consent about -- well, it could
22 have information about which to make an informed consent
23 about any continued use of Blaze Advisor. And that, of
24 course, assumes that the new organization wanted to. If
25 they didn't want to use Blaze Advisor, that's fine, but if

1 they did want to, we were asking for information.

2 The letter was also clear that any use of Blaze
3 Advisor without FICO's consent was not only in violation of
4 the license agreement, but was also intentional infringement
5 of FICO copyrights.

6 So notice was given, you breached, we would like
7 some information, and you don't have our permission to
8 continue to use Blaze Advisor without our consent.

9 On February 17th, Mr. Carretta received a response
10 from one of the Chubb lawyers, a gentleman by the name of
11 Hopp. And one of the things he said to Mr. Carretta was,
12 "Chubb & Son, the contracting party to the agreement,
13 remains a viable legal entity within the Chubb Group of
14 Insurance Companies, corporate structure and the contracting
15 party to the agreement. In short, Chubb & Son is still
16 FICO's client as such term is defined in the agreement, and
17 it is our position that no transfer or assignment of the
18 agreement has occurred."

19 In this litigation, FICO agrees with Mr. Hopp that
20 Chubb & Son is the client. FICO agrees with Mr. Hopp that
21 there was no assignment from Chubb & Son to anybody else
22 under the first sentence of paragraph 10.8. The issue isn't
23 that. The issue is the second sentence of paragraph 10.8
24 that Mr. Hopp doesn't address.

25 And so now Mr. Carretta has sent his letter.

1 Sixty days pass. I mentioned at the outset, it was an
2 effort to find a deal. And in that effort to find a deal,
3 FICO received on February 25, 2016, this commercial
4 proposal -- they labelled it that -- from Chubb. This came
5 from Chubb's vice president of software compliance and
6 optimization, Global Vendor Services Organization, Tamra
7 Pawloski. It is worth looking at.

8 The evidence shows that Chubb's position was
9 clear. Blaze Advisor would be used in the new Chubb Limited
10 Group of insurance companies in any way it chose. Chubb
11 reserved the right to change the applications using Blaze
12 Advisor at any time in its sole discretion. And while it
13 was said that there would be a limit on the number of
14 applications, limiting it to 15, you will hear that putting
15 a limit on 15 to the names of applications is meaningless.
16 FICO witnesses will explain that any number of applications
17 can be wrapped into a single name.

18 The FICO witnesses who -- FICO, when it received
19 this commercial proposal, thought it was a game. Actually
20 thought it was in bad faith, because of the meaninglessness
21 of 15 limitations. Because that doesn't say anything at all
22 about expanding the volume of transactions that go through
23 the applications. It doesn't say anything at all about
24 expanding the use from the \$12 billion organization and
25 integrating it into a \$30 billion organization. As I said,

1 the new organization was twice the size of the Chubb
2 Corporation.

3 The evidence will show -- oh, and, you know, in
4 addition to just limiting it to 15 applications, that
5 commercial proposal also is silent on any limit to volume.
6 So change the applications any way they wish, at their
7 discretion, no limitations on the volume of transactions to
8 go through the applications in the new larger organization.

9 The evidence will show that this is the writing
10 companies that use Blaze Advisor in connection with selling
11 insurance before the acquisition. Blaze Advisor was used in
12 connection with selling insurance in the name of 12 writing
13 companies in addition to Federal.

14 In the first nine months after that acquisition,
15 Blaze Advisor was used in connection with selling an
16 additional \$360 million of insurance in the names of
17 insurance companies that were never before connected to
18 Blaze Advisor.

19 The next year, Blaze Advisor was used in
20 connection with selling \$995 million of insurance from
21 insurance companies that had no connection to Blaze Advisor
22 before the acquisition.

23 After the acquisition, the use of Blaze Advisor is
24 now connected to 27 different writing companies, 14 more
25 than at the time of the acquisition.

1 I suspect that the defendants will be saying they
2 do not require FICO's consent because there was no expanded
3 use, the argument based upon the limitation of applications
4 to 15, saying nothing about the expanded use of those
5 applications.

6 Because applications were changed, the result was
7 millions, hundreds of millions of dollars more of insurance
8 transaction through Blaze Advisor applications and the
9 benefit given to twice as many writing companies.

10 The language of the license agreement is, in that
11 second sentence, we have the various specific assignment
12 events. Those events trigger deemed assignments that are
13 subject to this section that required FICO's consent. And
14 then the sentence goes on to say "And clients shall make no
15 expanded use until Fair Isaac provides its consent." We
16 have the assignment events, and the commercial purpose is
17 until FICO gives that consent, nothing different happens
18 with Blaze Advisor.

19 The status quo has to be maintained. If we
20 consent, that's another deal. Then there's a change. If we
21 don't consent, the license agreement becomes terminated.

22 It's noteworthy that the paragraph begins with the
23 word "And." There is not a loophole to -- there is not a
24 way to rewrite this paragraph to find a loophole that says,
25 well, if they don't expand use, we don't need your consent.

1 The "and" makes "and you shall not expand use until we have
2 an agreement" a further limitation on Chubb & Son. The word
3 does not begin with "but." That phrase does not begin with
4 "except that." The language agreement and the license
5 agreement is as it is written. And it is the client, Chubb
6 & Son, that will make no expanded use.

7 None of this discussion has anything to do with
8 ACE American. We haven't gotten to that yet because ACE
9 American is never the client.

10 So we are here now in the chronology. The license
11 agreement is terminated and time marches on, and the use of
12 Blaze Advisor continues. And so we have the termination
13 letter of March 30 saying, this serves as notice that the
14 agreement will be terminated the next day. And it further
15 says, please take further notice that provision of 9.3 FICO
16 considers you must stop use, FICO considers Chubb's current
17 use, any future use of the software not only a breach but
18 willful infringement of all applicable intellectual property
19 rights, including copyright infringement. The expectation
20 was that use would stop because the license agreement says
21 so. Paragraph 9.3 is the termination -- effective
22 termination provision, and it says, "Client shall
23 immediately cease using Blaze Advisor products." As I've
24 said, the use did not stop.

25 Blaze Advisor does not have a kill switch.

1 Control of its investment and ownership of the software
2 depends first on compliance with the license agreement.
3 And, secondly, it depends on the copyright registrations.
4 Now that there is no license agreement, now that there is
5 not permission to use Blaze Advisor, the unlicensed
6 without-permission use of Blaze Advisor is copyright
7 infringement. And despite the specific notice of
8 termination, the continued use of Blaze Advisor went on
9 knowingly. Paragraph 9.3 was ignored, and FICO starts this
10 lawsuit within less than a month because use did not stop.

11 I would like to return to some of the other
12 provisions of the license agreement that I introduced you
13 to, and now I'll talk about them in the context of their
14 violation.

15 We looked at 9 -- 3.1, representations and
16 warranties that Chubb & Son shall not, and those
17 representations and warranties were ignored in two ways.

18 First, Blaze Advisor software was disclosed to
19 third parties, consultants that did not have FICO's consent
20 to use or access Blaze Advisor. FICO first learned about
21 this near the end of March when a company called DWS Group
22 sought help from FICO's help desk about Blaze Advisor.
23 During the lawsuit, we learned about a second consultant
24 that was using Blaze Advisor without our consent, an outfit
25 called AppCentrica, and it was helping in Canada. The

1 license agreements 3.1, subdivision iv, were ignored.

2 Now, the process of litigation involves something
3 called interrogatories, which are simply questions, but the
4 questions are answered under oath. And so FICO asked
5 questions: Identify every person, division or entity, other
6 than employees of the Division Chubb & Son, to whom Blaze
7 Advisor has been disclosed or has used Blaze Advisor."

8 The answers under oath, Chubb Insurance Company of
9 Canada, including through its relationship with AppCentrica,
10 the consultant; Chubb Insurance Company of Australia,
11 including through it's relationship with DWS, the
12 consultant. Neither had FICO's permission.

13 Paragraph 3.1 also says, "There shall not be use
14 or access by any individual other than employees of Chubb &
15 Son." And the evidence will show that three foreign
16 insurance companies used Blaze Advisor in connection with
17 selling insurance using eight applications.

18 FICO learned for the first time -- it did not know
19 before. FICO learned for the first time in this lawsuit
20 that none of the employees of Chubb & Son are outside of the
21 United States. So that use by foreign insurance companies
22 was by non-Chubb & Son insurance companies.

23 Another thing in litigation is called admissions.
24 We submitted admissions requests, and the defendants
25 answered this way: Federal admits that Chubb Insurance

1 Company of Europe made use of Blaze Advisor software.

2 Federal admits that Chubb Insurance Company of Canada made

3 use of Blaze Advisor software. Federal admits that Chubb

4 Insurance of Australia made use of Blaze Advisor software.

5 And with no Chubb & Son employees outside of the United

6 States, paragraph 3.1 is violated in that second way, as the

7 evidence will show.

8 Now in this instance, I expect the defendants will

9 say, well, it doesn't matter. The excuse is, it doesn't

10 matter. And the argument may be that without materiality,

11 it doesn't count.

12 Paragraph 9.2(c) of the license agreement, in its

13 first sentence says, "FICO can immediately terminate this

14 agreement without a requirement for prior notice or cure

15 when the license -- when the license grant is violated."

16 Breach of 3.1 is exactly that. Materiality is not a

17 requirement. It is a requirement of the second sentence,

18 but not the first.

19 Now, in the context of the "it doesn't matter," it

20 does matter to FICO, and I want to try to overview the

21 evidence as to why.

22 You will see that the beginning of paragraph 3.1

23 has a variety of specific things that shall not be done.

24 Blaze Advisor will not be used in a manner that exceeds the

25 scope of the license. Blaze Advisor cannot be used -- it is

1 forbidden to alter, change, modify, adapt, translate or make
2 any derivative work of Blaze Advisor. And it is prohibited
3 to reverse-engineer, decompile, disassemble or otherwise
4 attempt to reduce the object code of Blaze Advisor.

5 Those are protections to the investment and
6 ownership that FICO has over Blaze Advisor. And when the
7 parties want to have permission for a consultant to use
8 Blaze Advisor, they put it in the agreement.

9 And paragraph 3.6 says, "Third-party use." And
10 the protections to FICO are put into the agreed third-party
11 use. Use is subject to the terms and conditions of the
12 license agreement. Use cannot exceed the limitations and
13 other restrictions. Chubb & Son is responsible for ensuring
14 the third party complies. Chubb & Son and liable to FICO if
15 the third party does not comply. And the rights granted
16 cannot be extended to any third party without FICO's
17 consent. None of those protections. FICO had none of those
18 protections when unauthorized third parties used and
19 accessed Blaze Advisor.

20 I also expect to hear evidence that the three
21 foreign insurance companies are affiliates of Federal. They
22 are. There's never been a dispute about that. FICO fully
23 agrees. But the evidence is that the client of the license
24 agreement is Chubb & Son, and the evidence also is that
25 Chubb & Son is not Federal, and the evidence is that Chubb &

1 Son does not have divisions -- I'm sorry, that Chubb & Son
2 does not have affiliates. And I meant -- and let me tell
3 you where the affiliate language comes from. It comes from
4 Amendment Two to the license agreement, and an affiliate is
5 specifically defined. It's another company of which the
6 client owns more than 50 percent.

7 Chubb & Son, the client, did not own more than
8 50 percent of any of those foreign insurance companies.
9 Chubb & Son did not own a stock of any other company.

10 This provision of client and its affiliates in the
11 license agreement because Chubb & Son is the client just
12 simply has no operation in the case. There is no reason for
13 it to apply. The defendants would like it to be otherwise,
14 but that's not the agreement that's written and it's not the
15 agreement that Chubb & Son signed. So let me now turn to
16 ACE American.

17 I overviewed the 10.8 being disregarded. I
18 overviewed 3.1 being ignored in two ways. I've overviewed
19 paragraph 9.3, effect of termination being ignored. Now let
20 me mention ACE American.

21 ACE American had nothing to do with the license
22 agreement. It did not breach the license agreement because
23 it never was a party to it. It's a completely different
24 company. And in January 1 of 2017, ACE American took over
25 the role of Chubb & Son, and ACE American became the manager

1 of all these other insurance companies, and ACE American
2 became the one using Blaze Advisor to sell insurance. No
3 license, no permission. As a consequence, that use is
4 copyright infringement. FICO did not learn of ACE
5 American's use of Blaze Advisor until this lawsuit. So in
6 the chronology, we have the unlicensed use by Chubb & Son,
7 Federal being responsible, and the unlicensed use by ACE
8 American.

9 So now let me turn to the remedy or the damages
10 that FICO seeks in this lawsuit. The employees of the three
11 different insurance companies were able to use Blaze Advisor
12 because Chubb & Son violated that provision of 3.1 regarding
13 not permitting anybody but a Chubb & Son employee to use it.
14 So there's a period of time before the license agreement is
15 terminated that FICO seeks to be compensated for all the
16 applications that these foreign insurance companies used to
17 sell insurance with Blaze Advisor. And then the license
18 agreement is terminated, but just like Chubb & Son, the
19 foreign insurance companies don't stop. And so FICO seeks
20 to be compensated for their use until their use actually
21 does stop.

22 There is the period of time when Chubb & Son is
23 using Blaze Advisor after termination, and FICO seeks to be
24 compensated for that. And then there is the period of time
25 where ACE American, unlicensed, infringer of copyrights,

1 uses Blaze Advisor on applications, and FICO wants to be
2 compensated for that.

3 So FICO looks at the damages in this way: The
4 unlicensed use of the foreign insurance companies before
5 termination, foreign insurance company use after
6 termination, unlicensed Federal use after termination, and
7 then ACE American's copyright infringement. So how do we
8 determine the dollar value to compensate FICO? That, ladies
9 and gentlemen, is your job.

10 Our last witness will be Bill Waid, a person who
11 has negotiated many hundreds of Blaze Advisor license
12 agreements over the years. And as I mentioned, there is no
13 one standard fee. And he'll explain first, you know, FICO's
14 value-based pricing. He'll look to some pricing methodology
15 that FICO has used since 2003. He'll testify how the
16 marketplace has accepted that pricing methodology for the
17 last 20 years. He'll relay his experience in negotiating
18 license agreements under the unique facts of each
19 circumstance. Every license, every licensee, every
20 circumstance has its own uniqueness to it.

21 There is one set of circumstances when you're
22 trying to negotiate a license agreement with a brand new
23 client, and there's another set of circumstances when you're
24 trying to figure the fair value to be compensated when the
25 license agreement has been terminated but the former client

1 needs a transition license to move away from using Blaze
2 Advisor.

3 Those circumstances are quite different. The
4 motivations between those circumstances are quite different.
5 And Mr. Waid will explain that Chubb & Son looks to the
6 total lifetime value of the relationship when it's
7 negotiating the fee. And so he will discuss total lifetime
8 value in the context of a brand new client, total lifetime
9 value in the context of the circumstance where a former
10 client needs a transition license.

11 The evidence will also consider and present for
12 your consideration well, how is Blaze Advisor used? How
13 does the licensee use Blaze Advisor? Well, in this case, it
14 was used -- it was central to the licensee's business
15 because it was used to sell insurance, and their business is
16 selling insurance.

17 Another consideration, and you figure out the fair
18 fee, is how much insurance was sold using Blaze Advisor? As
19 I mentioned, it's about \$5 billion for each unlicensed year.

20 Of course, licensees have their counterpoints to
21 be made in a negotiation. Mr. Waid will explain his
22 experience with respect to that as well.

23 And then at the end you will be the ones to
24 decide, what's the compensation to FICO for the years of
25 unlicensed use in these many applications to sell insurance?

1 And, now, let me now turn to what the law calls
2 disgorgement. This is the issue that the Court will be
3 seeking your advice on.

4 Disgorgement is a legal word that means taking
5 away from the infringer the benefits that are gained by the
6 infringement. And FICO seeks an award of disgorgement
7 because the infringement of intellectual property has
8 consequences. So says the copyright law of the United
9 States.

10 Here, over the years of infringement, Blaze
11 Advisor was used in connection with selling \$21 billion
12 worth of insurance. That's a huge number. Putting that
13 number in context, during that same period of time, Chubb
14 Limited sold more than \$150 billion worth of insurance. The
15 amount of benefit to be taking away from the defendants is
16 about 14 percent of that total.

17 Again, returning to the Chubb Limited 2018 annual
18 report, technology is a competitive weapon. In this case,
19 the defendants took the know-how, their own know-how of how
20 to sell insurance, but then they made it operational by
21 automating the process of selling and by automating the
22 decisions necessary to sell insurance. As stated in the
23 RFI, they needed Blaze Advisor in order to expand into the
24 small and mid-markets.

25 We will have an industry expert by the name of

1 Bick Whitener, who has studied hundreds of the documents
2 that the defendants have produced in this litigation, and he
3 will explain how they used Blaze Advisor in order to sell
4 insurance. In conclusion, his testimony is that the use of
5 Blaze Advisor made a significant contribution to the sale of
6 insurance.

7 Defendants have asserted counterclaims against
8 Blaze Advisor in reaction to the lawsuit. For all of the
9 reasons and the evidence that I have just overviewed, FICO
10 properly terminated the license agreement. For all the
11 reasons that I have just overviewed, that termination was in
12 good faith. For all the reasons I have overviewed, the
13 copyright and counterclaims have no merit.

14 So in summary, FICO brought this lawsuit because
15 its software was used without permission for years. That
16 unlicensed use was a knowing use. It was in disregard of
17 the license agreement, and it was in disregard of FICO's
18 copyrights.

19 We request to be compensated for the years of that
20 unlicensed and infringing use, and we request that the
21 benefits that the infringers gained from their infringement
22 of FICO's copyrights be taken away.

23 I thank you for your attention.

24 THE COURT: Thank you, Mr. Hinderaker.

25 Members of the jury, we're going to take our

1 morning recess now, and so we'll ask that you be back in the
2 courtroom at 25 minutes to 11:00 on that clock.

3 Now, remember, no research, no talking to outside
4 people, and you can talk amongst yourself about anything
5 except this case.

6 Thank you. We're in recess.

7 (Jury leaves the courtroom.)

8 (JURY NOT PRESENT)

9 THE COURT: Federal, I'm going to switch the input
10 here and make sure that it works for you.

11 MS. GODESKY: Sure.

12 THE COURT: Okay. Why don't you put something up,
13 anything, just to make sure that it's coming up.

14 Okay. Very well.

15 All right. We're in recess until 25 minutes to
16 11:00.

17 Counsel, nothing to talk about right now, right?

18 MR. HINDERAKER: I assume the slides have been
19 changed?

20 MS. GODESKY: Yes.

21 THE COURT: All right. Thank you.

22
23 (Recess taken at 10:21 a.m.)

24 (IN OPEN COURT)

25 (10:37 a.m.)

1 (Jury seated.)

2 THE COURT: Thank you everyone. You may be
3 seated.

4 All right. Ms. Godesky.

5 MS. GODESKY: Thank you.

6 Good morning, everyone. As you know by now, my
7 name is Leah Godesky, and I represent the defendants in this
8 case, Federal Insurance Company and ACE American Insurance
9 Company. As you will hear, both defendants are what's
10 commonly referred to as the Chubb Group of Insurance
11 Companies. And many of the witness from Chubb that you'll
12 see testify here today will call themselves Chubb employees.
13 And it will be a shorthand that I use a lot as well. I'm
14 very proud to represent Chubb in this case, and it means a
15 lot to these companies.

16 I'll be joined at counsel table throughout by
17 Mr. Claudio Ghislanzoni, who's sitting over there with the
18 glasses, and he's travelled all the way from England to be
19 here for the trial every day. Maxwell Bryer, who is an
20 attorney at Chubb, is also sitting next to Mr. Ghislanzoni.

21 Claudio being here from England is just a preview
22 of something you'll see about a lot of the Chubb witnesses
23 you'll meet during this trial because this case is about
24 technology infrastructure. And as you'll learn, you need
25 hands from all around the world to keep the technology

1 infrastructure of a big company like Chubb running.

2 I also want to introduce again Leah Janus -- there
3 are two Leahs -- and Terry Fleming, who are with the
4 Fredrikson firm right here in Minneapolis. And they, like
5 me, are representing -- lawyers representing the defendants
6 in this case, and they'll be presenting witnesses during
7 trial.

8 We also have Vanessa Wheeler, who's sitting in the
9 back there, and she's going to be running our exhibits and
10 videos so you can see documents throughout trial.

11 We're also working with a few other lawyers and
12 paralegals that you'll see from time to time because they're
13 working behind the scenes to keep things running as
14 efficiently as possible because we do not want to waste your
15 time. This is a very important case to our clients, and
16 it's very important to us that you're all taking time out of
17 your very busy lives to be here, so we are going to be as
18 efficient as possible, and I'm going to get started right
19 now.

20 So FICO just told you -- made references to the
21 fact that the defendants in this case did things like they
22 had indifference to the copyright, they were ignoring a
23 contract, there were unauthorized third parties using Blaze.
24 And all of those references are intended to make you feel
25 like Federal and ACE did something wrong and they should be

1 punished. So I want to start by making something very
2 clear. This case is not about whether FICO should be paid
3 for Blaze Advisor. The evidence will show that Federal
4 Insurance Company paid. It bought a perpetual license to
5 use Blaze, a never-ending license to use Blaze, across it's
6 entire global enterprise, with no limitation on how Blaze
7 could be used. And federal will show that it paid a fair
8 market price for that license, \$1.3 million, plus hundreds
9 of thousands of dollars every year for ongoing technical
10 support from FICO. No one will tell you that FICO wasn't
11 paid for that license. They should have been paid. And
12 they were paid.

13 So let me tell you what this case is about. This
14 case is about FICO trying to get a lot of money that it did
15 not earn. FICO wants to convince you that it is entitled to
16 both an additional second license fee for Blaze -- that's
17 what you're going to hear referred to as actual damages --
18 and part of the revenue and profits that Federal and ACE
19 earned during the period that Blaze was used at Chubb, and
20 that's called disgorgement damages.

21 Now, at the end of this trial, I do not think that
22 you're going to need to deliberate about how much money
23 Federal and ACE should pay FICO. That's because this
24 question of Federal and ACE owing money to FICO only becomes
25 relevant if you find that Federal somehow breached it's

1 contract with FICO or that Federal and ACE somehow committed
2 copyright infringement, and we do not believe that you will
3 find either of those things.

4 But the way trials work is that all of the
5 evidence gets mixed together. So the parties will put on
6 all their evidence about whether the license was breached,
7 whether there was copyright infringement, and this whole
8 question of damages at the same time. It gets all mixed
9 together. And I think you're going to probably find that
10 FICO wants to spend a lot of time talking about all of the
11 damages it hopes you will award. So I'm going to start
12 there, and I'm going to talk a bit about the money that FICO
13 is asking for.

14 First is this concept that defendants should pay
15 FICO another license fee for Blaze. You not going to hear
16 any evidence that shows they're asking for the actual market
17 value of a Blaze license. You won't hear any testimony from
18 any expert that actually supports the many millions of
19 dollars you're going to hear their witnesses talk about.
20 You'll hear a lot about really big amounts of money, but you
21 won't see any evidence that that was actually the going rate
22 for a Blaze license at any point in time in the last
23 20 years.

24 And that matters because the judge will tell you
25 that these license fee damages have to be based on the

1 actual fair market value of a Blaze license. And like I
2 said, the evidence will show that Federal paid \$1.3 million
3 for that enterprise-wide never-ending Blaze license. The
4 numbers and the figures that you're going to hear thrown
5 around by FICO's witnesses for this second license fee will
6 be many times that.

7 Now, you might be thinking, well, maybe Federal
8 just negotiated a better-than-market deal back in 2006. But
9 it's not just Federal. The evidence will show that FICO
10 regularly sells perpetual, never-ending, enterprise-wide
11 license to major companies, household-name companies, for
12 amounts ranging between \$750,000 and about \$2 million. You
13 will learn that no customer has paid anywhere near the
14 numbers that you will hear FICO presenting in this trial.

15 Now, you also heard FICO talk about these
16 disgorgement damages. This idea that FICO is also entitled
17 to a portion of Federal's and ACE's revenue. Now, revenue
18 is money that comes in the door at a company, and it's very
19 important, especially at insurance companies, that money
20 coming in the door is not the same thing as profit. Profits
21 are much lower because the whole point of an insurance
22 company is you have to be able to pay your customers'
23 losses. And the evidence will show that at the Chubb Group
24 of Insurance Company, a lot of money goes out the door to
25 pay customers when they have insurance claims.

1 Now, to try to justify this idea that FICO is
2 entitled to a portion of ACE's and Federal's revenues,
3 you're going to hear FICO's witnesses talk a lot about how
4 valuable Blaze is. Ladies and gentlemen, of course Blaze
5 has some value. Federal would not have paid \$1.3 million
6 for a Blaze license if it didn't, but the evidence will show
7 that FICO has already received that payment. Again, Federal
8 paid \$1.3 million for a never-ending, enterprise-wide
9 license, and when FICO said in 2016 that it was going to
10 terminate that license, it took away all of the rights that
11 Federal had already paid for.

12 Now, I told you that you won't have to think about
13 damages at all if you agree with us that Federal did not
14 breach its contract with FICO, so I want to spend most of my
15 time talking about other things right now.

16 It's going to take about 45 minutes of your time,
17 and I'm going to divide this into four parts so you know
18 what's coming.

19 First, I want to talk about FICO and Blaze. It's
20 very important that you understand FICO's very sophisticated
21 approach to selling Blaze and the nature of exactly what
22 Blaze does and what it cannot do for an insurance company
23 like Chubb.

24 Second, I'm going to show you the license
25 agreement between Federal and FICO, and I want to give you a

1 sense of some of the big problems with these breach claims.

2 Third, I'm going to talk about that copyright
3 infringement claim.

4 And then, finally, I just want to take a few
5 minutes to talk to you about the importance of keeping
6 promises and why Federal is bringing claims against FICO.

7 So part one, FICO. The evidence will show that
8 FICO is a big company with thousands of employees all around
9 the world. And FICO makes money in two main ways. First,
10 it provides credit scores. You may be familiar with that
11 aspect of FICO. It also sells software programs, like the
12 Blaze Advisor software program. And FICO is very
13 sophisticated when it comes to running its business.

14 This is from FICO's website. You can see that
15 FICO does business with all of the Top 10 Fortune 500
16 companies and 95 of the 100 largest financial institutions
17 in the United States.

18 Each time FICO sells a software program, it enters
19 a license agreement, and the evidence will show that these
20 license agreements differ a bit depending on who FICO is
21 doing business with. FICO will propose some terms to
22 protect its interests. The customer will propose some terms
23 to protect the customer's interests. And the end result is
24 a unique contract that everyone has to abide by and carry
25 out in good faith.

1 You'll learn that FICO has some guidelines for how
2 they think about pricing these license agreements, and
3 they're intended, as Mr. Hinderaker just said, to capture
4 the proximate value that FICO believes Blaze brings to a
5 company. And that makes sense, right? If anyone who makes
6 a product believes their product has value, and you want to
7 get paid based on what you believe the value of your product
8 is.

9 But critically, the evidence will show that when
10 these massive companies buy Blaze, companies with sprawling
11 operations and billions of dollars in revenue, FICO sells a
12 license to them for a few million dollars. Now, don't get
13 me wrong, a few million dollars is a lot of money. No one
14 in this room is buying at-home software licenses for a few
15 million dollars. But a few million dollars is nowhere in
16 the same stratosphere as the billions of dollars you just
17 heard FICO talking about.

18 And here's something I want you to remember as you
19 watch the witnesses testify at trial. FICO is in the
20 business of selling Blaze, and they are pretty good at
21 trying to get as much money as they can for their Blaze
22 software. There's nothing wrong with that. But if FICO
23 truly believed that Blaze was so valuable to businesses that
24 it could help generate billions of dollars of revenue, the
25 evidence would show that FICO charges mountains of money for

1 a Blaze software, and the evidence will show that it
2 doesn't. Remember, the evidence will show that FICO charged
3 Chubb \$1.3 million for that enterprise-wide perpetual
4 license.

5 Let's talk a little bit more about what Blaze
6 does. I want to be very clear from the beginning that we
7 are not here to criticize Blaze. Blaze is FICO's program,
8 and there is absolutely nothing wrong with them being very
9 proud of it. Of course, they are. And like I told you
10 before, Blaze has value. That's why Federal and plenty of
11 other companies purchase licenses to use the software. But
12 FICO has to make Blaze seem more important to Federal than
13 it actually was because that's the hook for the big payday.
14 That's the only way to try to justify large damages in this
15 case.

16 And after listening to FICO's opening, you might
17 be thinking that Blaze is a revolutionary piece of software
18 that was critical to the ability to sell insurance, but the
19 evidence will show that Blaze is one of multiple options,
20 multiple different software programs that all do the same
21 thing. They run business rules across a data set. You'll
22 see during trial that all of these software programs on the
23 screen right now have the ability to run business rules or
24 business logic, and you can even access the Drools program
25 for free.

1 I want to give you an example of a business rule
2 that was run at Chubb. The evidence will show that one of
3 the Chubb computer applications that integrated Blaze was
4 called the Texas Accident Prevention System, TAPS for short.
5 And you'll see a lot of what Chubb does is sell insurance to
6 businesses, and there are certain Texas laws that Chubb has
7 to comply with if it want to sell insurance in Texas to
8 business.

9 So here's two examples of Blaze rules. They both
10 have an "if, then" structure. If a customer has an fatality
11 in the last year at their business site, then the policy
12 would be flagged so that Chubb needs to follow up with an
13 in-person visit.

14 If a customer has a flood, then the policy will be
15 flagged so that Chubb can send out a brochure to help the
16 customer prevent floods, in accordance with Texas law.

17 These are the business rules. And while Blaze had
18 its uses, it also had its limitations. Blaze does not tell
19 you how many rules you should have, it doesn't tell you what
20 the rules should be, and it does not implement any of the
21 rules. Blaze didn't come up with any of these rules. The
22 evidence will show that Chubb employees did. It's the
23 people at Chubb who come up with the rules and then execute
24 on whatever the rules say need to be done, like sending out
25 a brochure.

1 People like Chubb Technology Executive Ellen
2 Garnes can explain this. You're going to get to meet her
3 during trial. Ms. Garnes worked on developing the TAPS
4 application I was just telling you about, and she will
5 explain all of the work and the judgment by the people at
6 Chubb that went into deciding what rules would be run in
7 that TAPS program.

8 The other thing is, the evidence will show that
9 Blaze was only integrated into 13 computer applications at
10 Chubb. That may sound like a lot, but the evidence will
11 show that Chubb had at least 1500 different computer
12 applications running at a given time. That means that Blaze
13 was used in less than 1 percent of the computer applications
14 at Chubb.

15 Now, I don't want you to think that Blaze wasn't
16 used in the remaining 99 percent of applications because
17 those applications didn't need to run business rules.
18 That's not the case. The evidence will show that nearly all
19 of the applications ever used at Chubb, all 1500 of them,
20 were running some type of business rules and logic. It's
21 just that in those other applications, the technology
22 architects decided it would be better to run rules a
23 different way.

24 I showed you that slide with all of the different
25 software programs that can do what Blaze does. Well, people

1 can do it too. And the evidence will show that in these
2 other applications, the 1500 applications shown on this
3 diagram, software engineers at Chubb were writing rules into
4 the applications with code that they wrote themselves. Why
5 would they do that?

6 Well, just like a lot of products, Blaze made
7 certain things easier and certain things harder. And the
8 evidence will show that Blaze slowed down Chubb's overall
9 technology system, and there was delay problems. And a lot
10 of the software engineers at Chubb were just more
11 comfortable writing their own code than they were using
12 Blaze.

13 Another thing about these computer applications,
14 even in these 1300 applications that use Blaze, Blaze was a
15 very small component. One of the applications you're going
16 to hear about in this trial was called CSI Express, and it's
17 an important application, but it was made up of at least 20
18 different software programs. Blaze was only one of them.
19 And that's true for all of these applications that use
20 Blaze. Blaze was never a standalone component of any of
21 them.

22 Ladies and gentlemen, the evidence will be that
23 Blaze had a very small role in the company's technology
24 infrastructure, and it simply wasn't the reason why Chubb
25 generated revenue, let alone why Chubb was able to turn some

1 of that revenue into profit.

2 A lot of things need to happen before you have a
3 successful company. We all know that. And at an insurance
4 company, everything from reputation, to financial
5 management, to operations, to compliance is going to have a
6 role in whether you're generating revenue and profit. And
7 you're going to hear during this trial from several Chubb
8 witnesses who will walk you through the pillars of what makes
9 Chubb the successful insurance company that it is and that
10 it has been for 230 years.

11 On the left is Mr. Kevin Harkin. He is CFO of
12 Chubb North America. Alissa Theberge is in the middle right
13 there. She's an executive at the group at Chubb that sells
14 insurance to businesses, and she's been with Chubb for more
15 than 20 years.

16 On the right is Mr. Mike Schraer. He is the chief
17 underwriting officer, meaning he oversees people who sell
18 insurance, and he's been with the company since the 1980s.
19 He worked his way up from being an on-the-ground underwriter
20 selling insurance to the top of the group.

21 And Mr. Harkin, Ms. Theberge and Mr. Schraer will
22 explain that what makes Chubb Chubb is the fact that it has
23 a reputation for paying insurance claims and paying them
24 promptly. It built that reputation by backing up its
25 promises with action. That's the main reason that the Chubb

1 Group of Insurance Companies has been around for hundreds of
2 years and why money comes in the door.

3 Remember, most of the insurance that Chubb sells
4 isn't sold to people like you and me. It's sold to
5 businesses, and those businesses buy insurance through
6 agents and brokers. And the folks at Chubb, like
7 Ms. Theberge and Mr. Schraer, have spent decades cultivating
8 relationships with agents and brokers all around the world
9 who tell their customers, their business customers, with
10 confidence: If you buy coverage from Chubb, your claims
11 will be paid.

12 And, of course, that only works and it only
13 generates revenue and profits if those agents and those
14 brokers then actually do see those claims getting paid.
15 Otherwise, they would stop bringing their customers to
16 Chubb.

17 The evidence will show that Blaze has nothing to
18 do with anything I'm describing right now. Remember, you'll
19 learn that Blaze was just one component of only 13 computer
20 applications, and it didn't even touch most of the things
21 that generate revenue for Chubb.

22 One more thing on revenue and profits before I
23 move on to another topic. The evidence will show that Chubb
24 removed Blaze from its internal systems in 2019 and 2020.
25 And that was a big deal because, remember, the evidence is

1 going to show that Federal had paid for a never-ending,
2 enterprise-wide license, so Chubb should never have had to
3 remove that software from its systems. But to use software
4 productively, you need to be able to count on your software
5 company for support and maintenance, and Chubb realized it
6 couldn't count on FICO after FICO had made up these breach
7 claims, so it was forced into a position where it had to
8 remove Blaze.

9 Now, if Blaze was really the reason why Chubb was
10 making revenues and profits, you would expect big problems
11 when Blaze is removed from the technology infrastructure,
12 right? But the evidence will show that when Blaze was
13 removed from these 13 applications, business went on as
14 usual. There were no reports of inefficiencies or problems
15 selling insurance. There were no problems bringing
16 customers in the door. There were no hiccups communicating
17 with those agents and brokers. And, in fact, the evidence
18 will show that the Chubb Group saw revenue growth, increased
19 revenue, in the years after Blaze was removed.

20 Okay. So we talked about FICO and Blaze, and now
21 I want to turn to the second thing I said I would cover this
22 morning, which is the license agreement that Federal
23 negotiated for Blaze and the breach claims.

24 So this slide here summarizes the first license
25 agreement that Federal and FICO entered in June 2006. And

1 the evidence will show that Federal started by paying
2 \$173,000 for the right to use Blaze at five seats, or with
3 five employees, and it agreed that it would only use Blaze
4 in a single application, that's CSI express application I
5 just mentioned.

6 The evidence will show that about a month later,
7 in August 2006, Federal and FICO issued the First Amendment
8 to the license agreement, and they agreed to expand the ways
9 that Federal could use Blaze. You can see here the purpose
10 of this expansion was to say, now you can use it at ten
11 seats instead of five, and you can use it within the entire
12 Chubb specialty lines division. So more seats, more people
13 can use Blaze, and there's no longer this limitation to just
14 keep it in one application. Use it anywhere in the
15 division. And the cost of this license was \$350,000.

16 Then just before year end 2006, on December 28th,
17 Federal and FICO executed a final amendment to the contract,
18 and this time Federal and FICO agreed that Federal would
19 have an enterprise-wide license, a perpetual license, with
20 no limitation on the number of applications, no limitation
21 on the divisions where you could use the software, and no
22 limitations on the number of seats. And the cost for this
23 license, this all-in, it's supposed-to-last-forever license
24 was \$1.3 million. And this shows you why FICO is wrong when
25 it says that this case is about Federal using something it

1 didn't pay for. Federal paid, the evidence will show, for a
2 perpetual, enterprise-wide license.

3 You'll hear from Federal witnesses that in the
4 world of vendor management where you enter contracts like
5 this all the time, enterprise-wide means that the product
6 you licensed can be used anywhere in the organization. And
7 the agreement could not have been clearer.

8 This is another excerpt from the second amendment.
9 It says "The enterprise-wide license shall mean that client
10 and its affiliates may use the Blaze product for their
11 internal business purposes with no limitation on the number
12 of seats or CPUs." CPUs is computer processing units.

13 And the evidence will show that the absence of any
14 limitations on this agreement was very significant. FICO
15 was agreeing that for \$1.3 million, whether Blaze was used
16 by five software engineers or 5,000, it could be used across
17 the enterprise. If Federal decided to go on a hiring spree
18 and hire 10,000 more underwriters around the world, FICO had
19 agreed that that \$1.3 million fee meant that Blaze could be
20 used around the enterprise with no additional payments.

21 So after this agreement was signed, Federal and
22 its affiliates, just like the contract says, including those
23 affiliates in Canada, Australia, and Europe, integrated the
24 Blaze software into those 13 applications.

25 As FICO said, the evidence will show that for

1 almost a decade, there were no issues between the parties.
2 You will see that Chubb and FICO communicated frequently
3 about how Chubb was using Blaze, and FICO never had any
4 concerns. So what changed?

5 On July 1, 2015, ACE announced it was acquiring
6 Federal's parent company, Chubb Corporation. And I know
7 I've been throwing the names of a lot of different insurance
8 companies at you, so I want to pause here and talk a little
9 bit about the corporate structure of Chubb before it was
10 acquired by ACE.

11 You will learn during trial that before Chubb was
12 acquired by ACE in 2016, it was called the Chubb
13 Corporation, and that's what you see on the outer ring of
14 this slide in the dark navy blue. The evidence will show
15 that before the acquisition, Federal Insurance Company,
16 which is in the middle of the box, that's one of my clients
17 in this case, conducted almost all of the insurance business
18 for the Chubb Corporation. And Federal had many different
19 affiliates all around world, including those foreign
20 affiliates you heard FICO talking about, Chubb Insurance
21 Companies of Europe, Australia and Canada. And those are
22 shown in the blue boxes underneath the box for Federal
23 because Federal controlled them.

24 And the fact that these companies were Federal
25 affiliates is important because remember what I just showed

1 you, the evidence will show that the final version of the
2 Blaze license agreement from December 2006 gave the client,
3 Federal, and all of affiliates, the right to use Blaze with
4 no limitations.

5 So how does the Chubb & Son division factor into
6 this? You heard about the Chubb & Son division. This is
7 Pamela Lopata. She is an attorney who has worked at Chubb
8 since before the ACE acquisition. And she will explain that
9 that Chubb & Son division was not a standalone company. It
10 did not have its own employees. It was simply the
11 contracting arm for Federal. It was a division within
12 Federal that signed contracts for Federal and issued
13 payments for Federal.

14 And Ms. Lopata will explain that before the ACE
15 acquisition, it was Federal's regular practice to have the
16 Chubb & Son division sign its contracts. And she'll explain
17 that Federal's vendors, they liked that practice, because
18 most of them knew and felt good about the Chubb name. No
19 one had ever heard of Federal.

20 And like I said earlier, the evidence will show
21 that pretty much everyone inside and outside the company,
22 including FICO, referred to this whole group of insurance
23 companies that you're seeing on the screen as the Chubb
24 group of insurance companies. That's the green ring on the
25 slide. That's why you are hearing me refer to Chubb.

1 So what happened after the ACE acquisition in
2 2016? The acquiring company was called ACE Limited. You
3 can see I replaced ACE on the outer ring of the slide. It's
4 replacing the Chubb Corp. But ACE Limited understood that
5 the name Chubb had a lot of name and brand recognition, so
6 it quickly changed its name to Chubb Limited. So you now
7 see Chubb Limited on the outer ring of the slide. And
8 Federal and ACE American, the two defendants in this case,
9 my two clients, were now both part of the Chubb Group of
10 Insurance Companies.

11 Now, as soon as this acquisition was announced,
12 FICO started talking about, what's this going to mean for
13 our business? And this is where I want to introduce you to
14 some of the key players at FICO.

15 You're going to hear a lot during this trial about
16 Russ Schreiber and Mike Sawyer. They were in FICO's sales
17 department, and they were the employees responsible for the
18 Chubb relationship. You won't get to meet them in person,
19 but you will see them on video presenting testimony.

20 You will learn that Mr. Schreiber helped negotiate
21 the contract in 2006. And Mr. Sawyer is what's called a
22 client partner, which means he was Chubb's main point of
23 contact at FICO. And the evidence will show that Mr. Sawyer
24 and Mr. Schreiber started talking about the ACE acquisition
25 right after it was announced in July 2015, and you will see

1 that they were worried about the ACE acquisition because ACE
2 was buying Chubb and ACE was also a FICO customer, but ACE
3 was a much smaller FICO customer. So FICO was concerned
4 that if ACE were in charge, those millions of dollars in
5 maintenance fees that Chubb paid every year might be coming
6 to an end.

7 And so the evidence will show that Mr. Sawyer and
8 Mr. Schreiber started a process of trying to figure out, how
9 can we get more money before that transition happens? And
10 they recruited a lawyer to help them, Mr. Tom Carretta. You
11 will hear from him at trial. And the evidence will show
12 that Mr. Carretta is one of the top lawyers at FICO, but he
13 had nothing to do with negotiating the 2006 license
14 agreement. In fact, the evidence will show that he had
15 nothing to do with communicating with Chubb at all until
16 Mr. Sawyer and Mr. Schreiber gave him a call when they heard
17 about the ACE acquisition.

18 So now I want to talk about these two breach
19 arguments that FICO came up with. And the first is this
20 idea that Section 3.1 of the contract was breached. FICO
21 says that because the 2006 license agreement was signed by
22 the Chubb & Son Division of Federal Insurance Company, every
23 time Chubb Canada, Chubb Europe or Chubb Australia used
24 software that included Blaze, there was a breach of
25 contract. That's the theory. That is FICO's argument

1 today. But the evidence will show that when FICO sold
2 Federal the software license in 2006 and throughout that
3 whole decade that followed, FICO knew that it was granting
4 Federal and all of its global affiliates, including Canada,
5 Australia and Europe, the right to use the Blaze license.

6 You're going to hear from a former Chubb employee
7 who negotiated the 2006 license agreement, Mr. Phil Folz.
8 Mr. Folz is retired now, but he'll explain that he
9 negotiated that \$1.3 million license fee knowing and
10 intending that it would allow all the global companies in
11 the Chubb Group to use Blaze.

12 As I told you earlier, during trial you're going
13 to get to see e-mails and communications at FICO from before
14 this litigation started, so you don't have to rely just on
15 what witnesses are telling you in the courtroom or on video
16 after the litigation began. When you pay close attention,
17 as I know you will, you will see that in a lot of places,
18 what FICO is telling you now does not match what it was
19 saying back then. FICO is telling you now that Blaze could
20 not be used by Chubb Canada, Chubb Australia or Chubb
21 Europe, but you will see documents that tell you what FICO
22 was saying then. Back then, before this dispute, before
23 this litigation, FICO acknowledged that it sold Chubb a
24 global license that included all global affiliates in
25 Canada, Europe and Australia.

1 Here's another example of this then/now phenomena.
2 The evidence will show that FICO came up with that
3 \$1.3 million license fee that Federal paid by looking at all
4 of Chubb Corporation's revenue, not just Chubb & Son's. The
5 evidence will show that when the folks at FICO sat down in
6 2006 to figure out how much are we going to charge for
7 Blaze, they looked at the total revenue earned by the entire
8 Chubb Group of Insurance Companies worldwide, \$12.3 billion
9 as the starting point for that license fee, all the global
10 entities in this navy blue frame on your screen. And yet,
11 even though back then, FICO charged and Chubb paid
12 \$1.3 million based on the revenue of all of its global
13 affiliates, FICO says, well, now those same global
14 affiliates' use of Blaze was a breach, and now we're
15 entitled to a second license fee.

16 Ladies and gentlemen, we are confident you will
17 reject this first breach claim as meritless.

18 Now, all the problems with FICO's claim that Chubb
19 Canada, Chubb Europe and Chubb Australia were not authorized
20 to use Blaze is why you also heard this other argument from
21 FICO about problems with consultants that use Blaze. They
22 needed a backup argument.

23 FICO now says that Chubb shouldn't have shared
24 Blaze with two consultants who worked at Chubb Canada and
25 Chubb Australia. On the screen is the IT director at Chubb

1 Australia, Russell Hodey, and he is coming to trial all the
2 way from Australia to address this. He will explain how
3 Chubb Australia hired a consultant called DWS to help
4 develop an application called "Evolution" that was going to
5 be used in Australia.

6 Chubb Canada was also using the Evolution
7 application, so Chubb Australia and DWS asked Chubb Canada
8 for some help. And in the course of that project, you'll
9 that an employee of AppCentrica, another consultant, gave
10 DWS a demonstration on how Blaze worked. The evidence will
11 show that Chubb Australia did not use Blaze in its Evolution
12 application because all of this was unfolding in 2016 right
13 as this litigation was starting, and Chubb was committed to
14 not expanding its use of Blaze.

15 That's it. That's all that happened. It would be
16 the kind of thing that no one would ever think twice about,
17 but because it happened at the same time that Mr. Sawyer,
18 Mr. Schreiber and Mr. Carretta were claiming Chubb was in
19 breach, it got folded into this lawsuit, and now we all have
20 to address it.

21 So now we're on the second breach argument you've
22 heard from FICO. They talked about this breach of Section
23 10.8, the assignment provision. Now, in the world of
24 contracts, a person or a company who holds rights under the
25 contract can transfer them. You can assign them to another

1 person.

2 So let's say that I go out and I rent an apartment
3 in Minneapolis for \$1,000 a month, and that lease gives me
4 the right to live in the apartment as long as I pay the
5 landlord \$1,000 a month. But then my job transfers me to
6 Chicago in the middle of the lease. So let's pretend that
7 my sister also lives in Minneapolis, and she happens to be
8 looking for an apartment with a \$1,000-a-month budget. I
9 might be able to assign, or transfer, the lease to my
10 sister, and it's like she's stepping into my shoes in the
11 contract, right? Now she has to pay the \$1,000 a month and
12 she gets to live in the apartment for whatever time is left
13 on the lease.

14 Because this concept of assignments is so common
15 in the world of business contracts, when FICO and Federal
16 sat down to negotiate their contract in 2006, they
17 negotiated assignment terms. And the evidence will show
18 that the parties agreed that there would be two very
19 different approaches to assignments.

20 First, Federal and FICO agreed in the first
21 sentence of Section 10.8 that run-of-the-mill assignments, a
22 situation where Federal just decided I'm going to paper
23 transfer my rights to someone else, just like I might want a
24 paper transfer my rights to my sister for my apartment, not
25 allowed. One of the executives at Chubb couldn't wake up

1 one morning and say, I'm done with Blaze; I'm going to
2 transfer the rights to my friend at MetLife. Couldn't do
3 that. Everyone agreed. That's the first sentence of
4 Section 10.8. And as FICO says, everyone agrees that type
5 of assignment didn't happen.

6 Now, FICO is hoping that you're going to see the
7 reference in the title of this section that says "No
8 assignment," and you're going to throw up your hands and
9 you're going to say, well, any and all assignments must have
10 been prohibited under this contract. But Federal and ACE
11 know that you're here and you were picked for this jury
12 because you said that you could be impartial and you would
13 give the parties their fair day in court. And that requires
14 hard work. It requires thinking very critically about what
15 the parties intended when they entered this contract. If
16 the no-assignment title on the contract was enough to
17 resolve this dispute, then we wouldn't need a trial where
18 you're asked to look at all available evidence to figure out
19 what the parties intended to agree to.

20 And the evidence will show that the second
21 sentence of Section 10.8 is very important. I'm going to
22 read it in its entirety because it's so important. It says,
23 "In the event of a change of control of client or if client
24 is merged with, acquired by, or inquires another entity or
25 undergoes a reorganization or otherwise acquires the right

1 to process the business of another entity, each such event
2 shall be deemed to be an assignment, subject to this
3 section, and client shall make no expanded use of the Fair
4 Isaac products as a result of such assignment -- of such
5 event unless and until Fair Isaac provides such written
6 consent, which will not be unreasonably withheld."

7 So I want to break that down a little bit and
8 start this process of the hard work. There was some
9 reorganizing and some changes of control during all of these
10 merger events, but I want to focus right now on the
11 acquisition, that ACE acquisition, the main event, and
12 here's how I want you to think about it.

13 When you look at Section 10.8, you need to
14 substitute "Federal" for the first two times that "client"
15 appears, because the evidence will show that Federal was the
16 client who bought the Blaze license. Then you can simplify
17 things. You can forget about all these references to events
18 other than an acquisition, because we're focused on an
19 acquisition right now. We're not worried about the merger
20 the reorganization, the right to process new business. So
21 I've removed them. I've simplified things with the green
22 dots.

23 And then you can fill in, well, what happened
24 here? We know that Federal was acquired by ACE Limited.
25 And you heard, FICO agrees, that acquisition was a deemed

1 assignment. And the evidence will show it's an automatic
2 assignment, not something you deem to paper. Who was the
3 assignment to? Well, it was to the acquiring company, ACE
4 Limited, which then became Chubb Limited because of the
5 brand recognition. And once you do this, once you just
6 substitute in the words to reflect what was happening during
7 the acquisition event, what does the contract say?

8 Let's look at the first clause. It says that "If
9 Federal is acquired by ACE Limited, the acquisition shall be
10 deemed an assignment subject to this section." Easy enough.

11 So what is the rule? What is it subject to? It
12 says, "ACE Limited," which then became Chubb Limited, "shall
13 make no expanded use of the FICO products as a result of any
14 such acquisition unless and until FICO provides such written
15 consent which will not be unreasonably withheld."

16 So it requires some thought, no doubt about it.
17 But when you dig in and fill in what actually happened here,
18 it is clear what the parties intended. The evidence will
19 show that the parties intended that if Federal were acquired
20 by another company, rights under the contract are assigned
21 to that new company. They're deemed assigned. In this
22 case, to ACE Limited and then Chubb Limited. And Blaze use
23 can continue so long as there is no expanded use. If use is
24 going to expand because you're growing your use of Blaze
25 through the acquisition, well, then you need to talk to FICO

1 and get some consent.

2 And you'll see that this makes perfect sense. Why
3 should a merger or a reorganization or an acquisition
4 entitle FICO to say, you have to stop using Blaze if the use
5 of Blaze isn't expanding? The evidence will show that the
6 parties agreed to a very specific expanded use rule. And
7 the evidence will also show that FICO does not always agree
8 to an expanded use rule, but it did so here, and with this
9 lawsuit, with this Section 10.8 breach claim, it's going to
10 ask you to rewrite the contract.

11 But every word in this contract matters. FICO is
12 going to be asking you to delete this expanded use rule
13 because the evidence will be that there was no expanded use
14 of Blaze after the ACE acquisition. And FICO rushed to
15 terminate the contract in March 2016 anyway, and that's
16 really hard to justify.

17 This is a letter that Chubb sent FICO in
18 February 2016 right after ACE acquired Chubb. Chubb
19 explained, "The applications that have been utilizing the
20 Blaze Advisor software since 2006 are currently running in
21 the exact same fashion as prior to the merger transaction."

22 The evidence will show that this assurance was
23 accurate. The 13 applications that were using Blaze after
24 the acquisition were the applications that were using Blaze
25 before the acquisition.

1 You heard a reference to 15 applications during
2 FICO's presentation. You'll see some of that during trial,
3 and it's because in these initial discussions, Chubb was
4 errring on the side of caution in trying to name how many
5 applications were using Blaze. And so there's some
6 reference to 15, but the evidence will show it's only 13.

7 And you'll see that when FICO terminated the
8 license agreement in March 2016, less than two months after
9 this acquisition closed and despite a black-and-white
10 assurance of no expanded use from Chubb, there was no
11 evidence of expanded use.

12 Now, I'm sure FICO will have a theory during
13 trial, maybe many theories, on how use of Blaze just must
14 have expanded after the acquisition. You already heard
15 today FICO talking about, well, some of the insurance
16 policies had new writing company names on them. But the
17 evidence will show that these are just things that FICO came
18 up with during years of litigation once it had doubled down
19 and had no choice but to try to come up with some
20 justification for terminating the contract in 2016. You
21 see, the evidence will show that FICO has known for years
22 that it would have trouble trying to show the use of Blaze
23 had expanded and that it a right to more fees just because
24 there had been an acquisition.

25 This is an e-mail exchange between Mr. Sawyer and

1 Mr. Schreiber in October 2015, before the acquisition. And
2 they're brainstorming about this whole idea of using the
3 acquisition as a basis to get more money. And Mr. Schreiber
4 says in the top email, "The unreasonably withheld bit has me
5 a little concerned." And that's a reference to the expanded
6 use rule. He's worried about it.

7 And Mr. Sawyer responds a few minutes later and
8 says I'm not so concerned about it. He says, the idea that
9 the companies got bigger should be enough to get around the
10 contract language. He says, "I would think that tripling
11 the size of the GWP" -- that's a reference to insurance
12 revenue -- "of business by application should be significant
13 enough to get around that unreasonably withheld language."

14 But it didn't take Mr. Schreiber long to identify
15 the problem with that argument back when FICO thought no one
16 was watching. Mr. Schreiber responds a few minutes later
17 and he says, "Well, is the license specifically tied to
18 GWP?" Meaning, is it tied to revenue? And the answer is
19 no. Mr. Sawyer responds, "I don't see anything on GWP on
20 the agreements."

21 And the evidence will show that this was
22 disappointing to Mr. Schreiber and Mr. Mr. Sawyer because
23 FICO has negotiated contracts with other customers that say
24 if -- that says FICO gets more money if the revenue of a
25 customer increases because of a merger or acquisition. But

1 as Mr. Schreiber and Mr. Sawyer were acknowledging back in
2 2015, that is not the agreement that they had negotiated
3 with Federal.

4 This is another example of FICO asking you to
5 rewrite, to renegotiate their contract for them. FICO could
6 have negotiated for that language, but the evidence will
7 show that it didn't, and that matters because words in a
8 contract are significant, and they can change the whole
9 meaning of a party's agreement.

10 You do not get a do-over at negotiating your
11 contract just because you file a lawsuit. And so by the end
12 of this trial, it will be clear that you should reject
13 FICO's claim that Federal breached Section 10.8.

14 Now, you also heard that FICO has brought claims
15 for copyright infringement, but the evidence will show that
16 when you do the hard work of closely examining what happened
17 after the acquisition, ACE American had every right to use
18 Blaze. In fact, the evidence will show that the whole point
19 of Section 10.8 was to guard against exactly the type of
20 infringement argument we're hearing today. Let me show you
21 what I mean.

22 So we're going back to the contract language in
23 10.8. As I showed you earlier, ACE Limited, which quickly
24 became Chubb Limited, stepped into Federal's shoes into the
25 contract and became the client. Then, just like my sister

1 obtains all the rights under my apartment lease if I assign
2 it to her, ACE Limited, then Chubb Limited, had all the
3 rights that Federal used to have under the Blaze license.

4 And as we discussed earlier, the evidence will
5 show that under the Blaze license agreement, the client, now
6 ACE Limited and Chubb Limited, and it's affiliates, could
7 use Blaze. And if you go back to the organization chart we
8 looked at before, you know that the evidence will show ACE
9 American was an affiliate of ACE Limited and then Chubb
10 Limited.

11 I was not kidding when I said that your jury
12 service will require hard work. I really meant it, but it
13 is important work because it's a lot easier to get swept up
14 in terms like infringement, indifference to contracts, than
15 it is to dig into the words of these contracts and parse all
16 of these corporate acquisitions that happened and figure out
17 what was actually intended. But you're all here on this
18 jury because ACE and Federal are confident that when you
19 look at this closely, if you're willing to do the hard work,
20 you will reject the copyright infringement claim too.

21 And now we're on the final topic I wanted to talk
22 to you about this morning. I want to thank you for your
23 attention so far. I really appreciate it. And I just
24 wanted to ask you to continue your attention for a few more
25 minutes while I talk about something that's very important

1 to ACE and Federal.

2 You see, Federal is not just a defendant in this
3 case. Federal is also asserting claims against FICO. As we
4 discussed before, Federal had a perpetual license to use
5 Blaze. It was supposed to last forever. Federal paid more
6 than a million dollars for that right. And you will see
7 that the agreement said that FICO could only terminate
8 Federal's use to use Blaze if there was a material breach of
9 the agreement. And for the reasons we talked about, the
10 evidence will show that Federal did not breach the
11 agreement. That means FICO could not and should not have
12 terminated the agreement and doing so was a breach.

13 Federal also has a very important second claim.
14 You'll learn that under the law, a covenant of good faith
15 and fair dealing is implied into every single contract, and
16 that means exactly what it sounds like. Parties to a
17 contract must act in good faith in their interactions and
18 they must be fair. And this is so important that parties
19 don't have to memorialize it in an agreement. It's just
20 automatically put into every contract that's signed.

21 And we're going to show that when FICO rushed to
22 terminate the agreement, even though there wasn't a stitch
23 of evidence of expanded use, there was no evidence that that
24 expanded use rule had been violated, it breached the implied
25 covenant.

1 Federal had paid for the right to use Blaze with
2 no limitations. It had an enterprise-wide, perpetual
3 license. It knew that it had to be careful if was an
4 acquisition event because under that expanded use rule, it
5 would need consent from FICO if it wanted to start using the
6 software differently.

7 Federal upheld its end of the deal, but FICO's
8 termination meant that Federal only got ten years out of a
9 contract that it expected to last forever. And that bad
10 faith meant that Federal had to spend time and money
11 transitioning Blaze out of those 13 computer applications
12 and replacing it with different software. So this claim,
13 the second claim, is about maintaining the integrity of the
14 deal that FICO and Federal made.

15 I will not get to speak to you again directly
16 until the end of the trial, so I want to thank you right now
17 for all of the hard work I'm asking you to do, and we know
18 that you will do it. You will do the hard work to figure
19 out what did these parties really intend when they entered
20 this contract? And at the end of trial, we're going to be
21 asking you to hold FICO to their end of the deal. And I'm
22 confident that when you hear from all the witnesses in the
23 case and you see the documents, you will do exactly that.

24 Thank you very much.

25 THE COURT: Thank you, Ms. Godesky.

1 Counsel, if I might get you both to rearrange the
2 podium and the cart so that they're facing appropriately.

3 Members of the jury, you've now heard the opening
4 statements, and we will start taking evidence in the case.

5 The evidence -- I believe I told you this was
6 coming. The evidence is going to start by my reading to you
7 a list of uncontested facts. They're uncontested facts
8 because the parties -- I'll wait until they're done.

9 MR. HINDERAKER: I'm trying not to break it.

10 THE COURT: Yeah.

11 All right. Thank you, both.

12 So they're uncontested facts because the parties
13 agree that these are, in fact, the facts and have been
14 established, so I'm going to read them to you. Please pay
15 careful attention to the facts that have been stipulated to.

16 Number 1, you will see an Exhibit J1. Exhibit J1
17 is the software license and maintenance agreement including
18 Amendment One and Amendment Two. We're going to call that
19 the license agreement.

20 2, the license agreement is a valid and
21 enforceable contract.

22 3, Chubb & Son is an unincorporated division of
23 Federal Insurance Company. We're going to call Federal
24 Insurance Company "Federal."

25 Chubb & Son does not have subsidiaries, number 4.

1 Number 5, Chubb & Son does not have affiliates as
2 that term is defined in Amendment Two.

3 6, Chubb & Son operated as the manager of domestic
4 and foreign insurance company subsidiaries of Federal.

5 Number 7, as manager of insurance company
6 subsidiaries of Federal, Chubb & Son was empowered to manage
7 the business and insurance by and on behalf of and in the
8 name of the insurance company subsidiaries of Federal.

9 Exhibit J2 is the February 3, 2006, request for
10 information of Chubb & Son, a division of Federal Insurance
11 Company, for itself and as servicer for the Chubb
12 Corporation and its non-insurance company subsidiaries or as
13 manager of its insurance company subsidiaries sent to FICO
14 in February 2006.

15 Before the acquisition of the Chubb Corporation by
16 ACE Limited, Federal was wholly owned by the Chubb
17 Corporation.

18 Before January 15, 2016, all the ownership and
19 voting rights of the stock of Federal Insurance Company were
20 held by the Chubb Corporation.

21 11, before the acquisition, the Chubb Corporation
22 was the parent of a group of insurance companies that
23 operated together as a \$12 billion enterprise.

24 Number 12, before the acquisition, ACE INA
25 Holdings, Inc. was a wholly owned subsidiary ACE Limited

1 created for the purpose of effectuating a merger transaction
2 with the Chubb Corporation.

3 Number 13, after the acquisition of the Chubb
4 Corporation by ACE Limited, the Chubb Corporation ceased to
5 exist.

6 Number 14, after the acquisition of the Chubb
7 Corporation by ACE Limited, ACE Limited changed its name to
8 Chubb Limited.

9 Number 15, after January 15, 2016, Federal was a
10 wholly owned subsidiary of ACE INA Holdings, Inc.

11 Number 16, Federal and ACE American are now part
12 of a group of insurance companies with Chubb Limited as the
13 ultimate parent of both.

14 Number 17, Federal and ACE American are both
15 indirect wholly owned subsidiaries of Chubb Limited.

16 Number 18, after the acquisition, Chubb Limited
17 was the parent of a group of insurance companies with total
18 annual revenue of 30-plus billion dollars.

19 Number 19, the acquisition was the largest merger
20 in insurance history, resulting in the largest publicly
21 traded property and casualty insurer in the world.

22 Number 20, I am going to be -- 20 through 30 are a
23 list of applications in which Blaze Advisor was used.

24 Number 20, Blaze Advisor was used in the CSI
25 Express application.

1 Number 21, Blaze Advisor was used in the decision
2 point application.

3 Number 22, Blaze Advisor was used in the automated
4 renewal process application.

5 Number 23, Blaze Advisor was used in the CUW-IM
6 application.

7 Number 24, Blaze Advisor was used in the IRMA
8 which stands for individual rate modification application,
9 application.

10 Number 25, Blaze Advisor was used in the TAPS, an
11 acronym for Texas Accident Prevention System Application.

12 Number 26, Blaze Advisor was used in the Premium
13 booking application.

14 Number 27, Blaze Advisor was used in the Adapt-ABL
15 (EUZ) application. It's Adapt-ABL, (EUZ) application.

16 Number 28, Blaze Advisor was used in the EZER
17 (EUZ) application.

18 Number 29, Blaze Advisor was used in the
19 Adapt-ABL, application use by Chubb Insurance Company of
20 Australia.

21 Number 30, Blaze Advisor was used in the
22 Profitability Indicator Application.

23 Number 31, the Blaze Advisor component was removed
24 from the version of Decision Point used by the Financial
25 Lines Unit on or about April 10th of 2020.

1 Number 32, the Blaze Advisor component was removed
2 from the version of CSI Express Automated Renewal Process
3 and Profitability Indicator used by the Financial Lines Unit
4 on or about January 17th of 2020.

5 Number 33, the Blaze Advisor component was removed
6 from the version of Premium Booking used by Corporate
7 Business Systems on or about April 17 of 2020.

8 Number 34, the Blaze Advisor component was removed
9 from the version of CUW-IM used by the Chubb Commercial
10 Insurance Business Unit in early November 2019.

11 Number 35, the Blaze Advisor component was removed
12 from the version of TAPS used by the Chubb Commercial
13 Insurance Business Unit in the late third quarter or early
14 fourth quarter of 2019.

15 Number 36, the Blaze Advisor component was removed
16 from the version of the IRMA used by the Chubb Commercial
17 Insurance -- I should have been indicating Chubb Commercial
18 Insurance has the acronym in parentheses "CCI" -- Business
19 Unit in either the summer or early fall of 2019.

20 Number 37, the Blaze Advisor component was removed
21 from the version of EZER used by CEGSE, on or about March 29
22 of 2019.

23 Number 38, the Blaze Advisor component was removed
24 from the version of Adapt, used by CEGSE and Chubb Insurance
25 Company of Australia on or about January 27, 2019.

1 Number 39, the Blaze Advisor component was removed
2 from the version of EZER used by UK Federal on or about
3 March 29, 2019.

4 Number 40, the Blaze Advisor component was removed
5 from the Evolution Application on or about September 27,
6 2019.

7 Number 41, FICO owns a valid copyright for Blaze
8 Advisor versions 3.0, 4.0, 5.0, 6.0, 6.5, 6.6, 6.7, 6.8,
9 6.9, 7.0, 7.1, and 7.2.

10 Number 42, after March 31, 2016, the Blaze Advisor
11 software code was not modified in any way by Chubb & Son, a
12 division of Federal -- or Federal, or any other associated
13 entity or person.

14 Number 43, one of the versions of the Blaze
15 Advisor software at issue in this case is Blaze Advisor
16 version 7.1. Blaze Advisor version 7.1 was derived from
17 FICO's registered copyright in version 7.0. FICO's
18 registered copyright in Blaze Advisor version 7.2 is derived
19 from Blaze Advisor version 7.1.

20 Those are the stipulated facts between the
21 parties.

22 Mr. Hinderaker, we may begin with the presentation
23 of your evidence. It's about quarter to 12:00. Do you have
24 a witness who could start his or her testimony?

25 MR. HINDERAKER: Your Honor, Sean Baseman, if I

1 may gather him.

2 THE COURT: Okay. We'll go for another 15 minutes
3 before the lunch break or shortly after that, and then we'll
4 break for lunch, okay?

5 Come on up, Mr. Baseman. If you will come up here
6 and raise your right hand. Come on over here.

7
8 **SEAN BASEMAN,**

9 duly sworn, was examined and testified as follows:

10
11 THE COURT: Go ahead and be seated. And state
12 your full name for the record, please.

13 THE WITNESS: My name is Sean Justin Baseman.

14 THE COURT: Go ahead.

15 MR. HINDERAKER: Thank you.

16 **DIRECT EXAMINATION**

17 BY MR. HINDERAKER:

18 Q. And, Mr. Baseman, where are you from?

19 A. Where am I from?

20 Q. Where do you live?

21 A. I currently live in Los Angeles, California.

22 Q. What is your current position with FICO?

23 A. My current position in FICO is I have responsibility for
24 technical architecture and solution architecture for the
25 firm.

1 Q. Well, let us start with the technical architecture.

2 What does that mean?

3 A. Technical architecture is I work with a team of
4 individuals that design the future state of our products, or
5 software products.

6 Q. And what does a solution architect mean?

7 A. A solution architect is I work with our customers to
8 identify their problems and look for solutions using zero or
9 more FICO technologies.

10 Q. Okay. And can you describe -- on the solution
11 architecture side, can you describe a little bit more on
12 that so we understand what it means to meet with a client,
13 look at a problem, find a solution?

14 A. Absolutely. As you can imagine, customers all over the
15 planet have varying degrees of problems that they're trying
16 to solve, and they typically look for technology solutions
17 to help them. So my role in that part of the organization
18 is to work with our customers, listen to what their problems
19 they're trying to solve, and help articulate a way to solve
20 those problems using technology that FICO would provide.

21 Q. What type of problems is it that a client has that wants
22 to look at FICO technology?

23 A. So typically they have efficiencies and business
24 problems they're trying to solve, where they would have
25 various connecting types of systems and they're looking for

1 ways to centralize those and bring business expertise out of
2 the -- out of their business users' heads and then put them
3 into technology and use them within their existing
4 infrastructures.

5 Q. I wish I had caught all of those words.

6 You mentioned using technology to bring together
7 all of their existing structures?

8 A. Correct.

9 Q. Could you describe for us what that means in more common
10 language?

11 A. Yes, of course. I will attempt.

12 So most organizations of any type will have years
13 of computer systems that are already in place that do very
14 specific things. And typically what they're trying to do is
15 bring those existing systems together to solve new types of
16 problems while not discarding those existing systems, right,
17 because they've been there for a while and they're useful.

18 Q. When you say "new types of problems," are you
19 referencing business problems?

20 A. Absolutely, yes.

21 Q. Let's be a little more specific and turn the
22 conversation to when customers are looking at Blaze Advisor
23 as a means to solve business problems. What's your
24 background with that?

25 A. Correct. So within Blaze Advisor space, I've been

1 working with Blaze Advisor now for 20 years for FICO. Blaze
2 Advisor is a business rule management system upon which
3 allows our customers to bring into technology their existing
4 know-how and knowledge across the organization and automate
5 that.

6 Typically, they're trying to look at solving
7 problems around first documenting and understanding what
8 those policy and rules are. The second is to be able to
9 automate those rules in the form of decisions, and then
10 typically there is some efficiencies around that of how they
11 bring things together for other purposes.

12 Q. Okay. The first part of your answer was bring their
13 know-how into technology?

14 A. Correct.

15 Q. Can you tell us what that means?

16 A. Absolutely. So all businesses are typically there to
17 support financial gains for companies. And in those
18 financial gains for companies, there are usually hundreds or
19 thousands of individuals across the organization that know
20 how to do the things day to day that requires that.

21 One of the challenges that you have is when people
22 manage that, it's typically inconsistent. You don't
23 necessarily know what decision you made and how that was
24 affected. And the problems that they are trying to solve
25 is, first, identify what all of those rules are across the

1 organization so they can see them, and then, second, is to
2 empower them to change and modify those in a more consistent
3 way.

4 Q. Is Blaze Advisor a solution to those problems?

5 A. Absolutely.

6 Q. So how?

7 A. So being a business rule management system, it provides
8 a framework of which they can articulate or write down those
9 concepts that are in their heads, policy manuals, curistics
10 that they are doing, you know, human-based logic on, and
11 codify them in some form.

12 Now, the business rule management system provides
13 various functionality to make that easier. For example,
14 metaphors is essentially a picture where you can represent
15 certain complex statements in a graphic. And it also puts
16 the structure in place that allows them to change and modify
17 and create whole new rules or policies without the
18 interaction of IT, and that's the information technology
19 team. That's a core group of programmers that would
20 typically do things.

21 Q. Okay. And you've used the title or name "business rules
22 management system." I take it that's an industry title for
23 this kind of software?

24 A. That is correct. That is an industry standard term for
25 that type of software.

1 Q. So as business rules and management -- and Blaze Advisor
2 is a business rules management system?

3 A. That's correct.

4 Q. And you mentioned, I think, if I heard you, two major
5 elements of a business rules management system or two major
6 elements of Blaze Advisor was, one, managing, and the other
7 automating?

8 A. Correct.

9 Q. Could we just talk about one at a time?

10 A. Absolutely. That would be the easiest way.

11 Q. So if you would tell us how Blaze Advisor is used to
12 manage the decisions or decision-making process of a
13 company.

14 A. Yes, absolutely. So if you look at how it helps to
15 manage the decisioning process, right? So we talk in terms
16 of rules and decisions, right? And if you look at what a
17 rule is, a rule is essentially an "if" statement, right? If
18 X, then Y. And those are typically difficult to understand
19 as things get more and more complicated.

20 Now, notice I haven't actually made a decision
21 yet. The decision that I make is at the point of
22 interaction with some sort of request, I need to make a
23 decision. So what is the output of multiple rules? That
24 would be the decision that I'd make.

25 The business rule management system provides a

1 framework of which nontechnical users can write and express
2 their logic in a standard format that can be readable and
3 usable and, thus, managed because there's a life cycle
4 associated with that". Who did what? Am I allowed to do
5 that?

6 Once I've made those changes, is that the change
7 that I expected it to do, right? I can test that change.
8 Did I break something? All of this is what's classified
9 rolled into the business rule management system.

10 And that's very separate from the business rule
11 engine side of it, which is the actual codification of that
12 logic. That codification is essentially, you know, the
13 English language to programming languages, right, that sort
14 of transformation to how that happens, and that's the actual
15 running of those rules. And, obviously, there's a lot of
16 technology that goes behind that as well.

17 Q. Does Blaze Advisor technology itself accomplish that
18 transformation between the rules that are being managed and
19 the engine that executes those rules to make a decision?

20 A. Yes, it does.

21 Q. How does it do that?

22 A. Through the relationships and how you store and manage
23 those rules, it actually interprets those rules and comes up
24 with the -- what we like to say, the path of least
25 resistance, to run those rules.

1 So one of the things that's interesting is humans
2 thing in a very interesting, you know, nonlinear fashion
3 most of the time, and the way they articulate their rules is
4 typically unorganized. So by being able to put an
5 organization to it, to allow them to think in their own
6 terms, the engine actually translates that into a set of
7 statements that can be run by other computer programs.

8 Q. And by the translation, is that a translation into the
9 software code that the computer can read and execute?

10 A. Yes.

11 Q. Before we go any further with this discussion, tell
12 us -- before we get to your specific experience with Chubb,
13 tell us what is your experience in the insurance industry
14 relative to Blaze Advisor and working with clients for
15 solutions?

16 A. Yes. So as stated earlier, I've been at FICO now for
17 20 years. I've worked in various capacities at FICO around
18 implementing problems, that is in a delivery aspect where I
19 actually work with the customers to build those solutions,
20 as well as a sales capacity from a technical sales
21 perspective. And that technical sales perspective is how
22 does the tool work? How does this happen, et cetera.

23 Now, through those various years I've been exposed
24 to several large insurance companies across the planet and
25 helped them understand how Blaze Advisor could help solve

1 their particular problems that they're looking for. And
2 each customer has various degrees of problems and different
3 problems they're trying to solve, and it's really a matter
4 of understanding what problem they're trying to solve which
5 requires an understanding cursory level of the industry and
6 how all that fits together, as well as what their existing
7 systems do, how they tie together, and how Blaze Advisor
8 would fit into that environment. Or not. Sometimes it
9 doesn't.

10 Q. And can you tell us some of the insurance company names
11 that you've worked with?

12 A. Sure. So [REDACTED] would be one. [REDACTED] would be
13 another. [REDACTED] out of the United
14 Kingdom, are some of the ones that come to mind.

15 Q. And we kind of got started right off with the -- right
16 into the meat of it, but let me back off a second and if you
17 would tell the jury what your educational background is
18 before you got to FICO with your history.

19 A. Sure. My educational background is I possess a bachelor
20 of science in management information system acquired through
21 Junior Commonwealth University.

22 THE COURT: Mr. Hinderaker, let me interrupt for a
23 second. Are you at a natural breaking point or close to
24 one?

25 MR. HINDERAKER: Sure. I can, Your Honor.

1 THE COURT: Okay. Why don't we take our noon
2 break. Be back in the courtroom at 1:30, okay?

3 THE CLERK: All rise for the jury.

4 (Jury leaves courtroom.)

5 (JURY NOT PRESENT)

6 THE COURT: You may step down, but let me show you
7 something. When you pivot, your voice is going away from
8 the microphone and sometimes a little bit too far, so try
9 and keep that in mind and not move back and forth, okay?

10 THE WITNESS: Yes.

11 THE COURT: All right. Counsel, you may be
12 seated.

13 I know we have to take up an issue regarding some
14 of the documents that were coming through Mr. Baer, correct?

15 MR. HINDERAKER: Yes.

16 THE COURT: And do you anticipate that that might
17 be this afternoon that he will be wanting to use those
18 exhibits?

19 MR. HINDERAKER: I think the underlying word is
20 "might." It would certainly be the last witness of the day.
21 I can't say he won't be.

22 THE COURT: Why don't we plan then on taking that
23 up. Why don't we be back in here at 1:00, if we can, to
24 take that up. Does that give you all enough time?

25 MR. ERBELE: Yes, it does, Your Honor.

1 MS. GODESKY: Yes.

2 THE COURT: Okay. We'll see you back here at
3 1:00. Thank you.

4 MS. KLIEBENSTEIN: Your Honor, I have one super
5 quick housekeeping question. J1 and J2 were read out loud
6 in the statement of uncontested facts. Do you want us to
7 move for admission of those when exhibits are coming in
8 without objection?

9 THE COURT: Those are admitted.

10 MS. KLIEBENSTEIN: Perfect. Thank you.

11 THE COURT: All right. Thank you.

12 (Lunch recess taken at 12:06 p.m.)

13

14 (JURY NOT PRESENT)

15 (1:03 p.m.)

16 THE COURT: All right. We're back on the record
17 in FICO versus Federal, et al., taking up a motion to
18 exclude certain exhibits that are anticipated to be offered
19 through Benjamin Baer, who is likely or possibly to be
20 called this afternoon. Who is going to address Federal's
21 argument?

22 MR. FLEMING: Good morning, Your Honor. Or good
23 afternoon.

24 THE COURT: Good afternoon.

25 MR. FLEMING: Your Honor, the documents fall into

1 three categories. There's third-party consultant reports,
2 two documents. There are white papers, and then there are
3 overlapping categories, three documents that were disclosed
4 late.

5 In speaking about the consultant reports first, it
6 is straightforward hearsay. There are third parties who are
7 providing -- I mean, we use the word fawning, very
8 supportive report about FICO, but they don't have any
9 foundation that can be laid. When Mr. Baer was deposed, he
10 said he wasn't sure whether it was based on FICO information
11 or third-party analysis and beyond that, they're not
12 business records. They're not kept in the ordinary course.
13 They're not reliable. They're inherently unreliable.

14 THE COURT: Which are the consultant reports,
15 which numbers?

16 MR. FLEMING: 95, the ESG report; and 102.8, which
17 is the Forrester report.

18 THE COURT: Keep going.

19 MR. FLEMING: Well, and the EST report was
20 actually paid for by FICO. I mean, it was for the purpose
21 of getting a report that's positive like this to give to
22 customers. One of the hallmarks of a business record is its
23 reliability, and this is the opposite of that. There's no
24 reason to believe they're accurate or that they were
25 prepared for the purpose of being accurate, Rather they were

1 paid for to provide the results as to their customers. I
2 mean, it's not a -- it's a pretty straightforward, just
3 hearsay with no business records exception.

4 And then with regard to the white papers, it's the
5 same issue. They're not reliable. There's no reason to
6 believe they're accurate. They don't have the ordinary
7 indicia of business records as opposed to they were prepared
8 for a particular purpose: To provide positive information
9 about FICO's products with regard to particular customers.
10 They rely simply on positive evaluations, and its entire
11 purpose is to sell more software. So they are not, you
12 know, traditional business records for those reasons.

13 And then there's three documents that weren't
14 disclosed during discovery, and those are 1024, 1025, and
15 1028.

16 And if I may make one more point, there's also the
17 issue with many of these documents providing, you know,
18 pseudo-expert testimony. I mean, 1024, for example, talks
19 about a 356 percent return on investment. There are -- you
20 know, rate of returns provided in these documents. They
21 provide present value. It's the typical type of expert
22 testimony where we haven't had a report relating to that
23 information, we haven't had an opportunity to engage in
24 discovery on that information.

25 THE COURT: That's with respect to 1024, 1025 and

1 1028, did you say?

2 MR. FLEMING: That is 1024. 1025 and 1028 are the
3 late-produced documents.

4 THE COURT: And they were not produced in
5 discovery?

6 MR. FLEMING: Correct.

7 THE COURT: So it's not an issue about whether
8 they were on the exhibit list.

9 MR. FLEMING: Correct.

10 That's all.

11 THE COURT: Okay. Thank you, Mr. Fleming.

12 Mr. Erbele? Do repeat your name for the court
13 reporter's benefit.

14 MR. ERBELE: Yes. This is Michael Erbele
15 appearing on behalf of FICO.

16 So I'll take these in order, Your Honor.

17 First is the third-party consulting reports. And
18 Mr. Baer will lay the foundation for these reports. These
19 were created by third parties, but FICO was involved in the
20 creation process and FICO provided information to the third
21 parties in creating these reports.

22 The ultimate conclusion, and the name on the
23 report, however, is the third party, and it's their
24 independent analysis that is providing the reliability.

25 THE COURT: What is he going to testify to about

1 FICO's involvement in the creation? What's he going say?

2 MR. ERBELE: He's going to say that FICO's
3 marketing department identified these third parties as
4 consulting leaders in the IT consulting industry. The
5 reason they did so is because these third parties provide
6 many IT consulting reports. They're recognized in the
7 industry, and that FICO provided information about the
8 performance of the Blaze Advisor software to these third
9 parties in the course of them creating these reports.

10 THE COURT: Okay.

11 MR. ERBELE: He'll also explain that FICO verified
12 the accuracy of the information provided to these third
13 parties.

14 Mr. Fleming says they're not business records of
15 FICO, but the Eighth Circuit recognized the adoptive
16 business record rule under which a business record of a
17 third party, here, the consulting reports, can be
18 incorporated into the business records of the custodian,
19 here, FICO.

20 THE COURT: Let me ask you about that. The cases
21 that you cite seem to be slightly different in the sense
22 that what they're taking is what's apparently, on its face,
23 a business record of an entity and then incorporating that
24 into their own business record. So like an invoice or
25 things of that nature. This does seem different from that.

1 So how is the consulting -- sticking with the consulting
2 report, how is that a business record of FICO's?

3 MR. ERBELE: This is analogous to the *Condu*s case
4 that's cited on page 3 of docket 1083. So in this case
5 there was a bank that had interviewed with consultants. The
6 third-party consultant received information from the bank
7 based on a review of those documents and interviews with
8 employees, which is the same types of information that FICO
9 provided to third-party consultants here. And the Court in
10 that case applied the adoptive business rule to find the
11 consulting report to be a business record of the proponent.
12 You know, the Court noted that the investigation of fact
13 gathering used to create it was conducted contemporaneously
14 with the presentation of that report and that the reports
15 were made in the ordinary course of the consulting industry,
16 of the consultant because they were in that industry.

17 THE COURT: Okay.

18 MR. ERBELE: And so I would submit that same logic
19 applies here. It is a consultant report. It is
20 incorporated into FICO's business records, and FICO
21 themselves rely on the accuracy of these reports because
22 they're distributing them to their potential clients in the
23 ordinary course of their marketing.

24 THE COURT: Okay, so turn to the white papers.
25 How are those generated?

1 MR. ERBELE: White papers are all FICO documents.
2 They are prepared by FICO's marketing department. And for
3 those documents, some of these documents incorporate the
4 successes that FICO's clients realize from using Blaze
5 Advisor software.

6 So in these instances, FICO's marketing department
7 interviews FICO's clients that have used Blaze Advisor for a
8 period of time. Through this interview process and from
9 receiving documents from FICO's clients, they understand and
10 document the business successes of Blaze Advisor. They then
11 draft a draft of the report. The report is exchanged with
12 the client. The client has an opportunity to review and
13 verify the accuracy of the information. And before the case
14 study is published, the client confirms the accuracy of that
15 information.

16 THE COURT: That's really perhaps a triple hearsay
17 problem. The statements by the customers, some of which are
18 quoted here in some of these documents, how do you get those
19 statements around -- I mean, they're obviously hearsay. How
20 do you get them around hearsay?

21 MR. ERBELE: For the business benefits themselves,
22 they're based on the business records of FICO's client,
23 which is then incorporated into FICO's own business record,
24 the business record of the case study itself produced by
25 FICO's marketing department.

1 THE COURT: Who's going to testify that they're
2 based on the client's business records?

3 MR. ERBELE: Mr. Baer will lay the foundation. He
4 will establish that the business benefits of Blaze Advisor
5 are recognized by the client and kept by the client in the
6 course of their business and that they are then incorporated
7 into FICO's business records of FICO's marketing department.

8 THE COURT: What's his foundation for that?

9 MR. ERBELE: In his role as the VP of marketing,
10 he was in charge of working with FICO's clients to
11 understand these benefits realized by their business.

12 And I'd like to call Your Honor's attention to a
13 case regarding foundation from the Eighth Circuit. Let me
14 find it. That is the *Resolution Trust* case cited on page 5
15 of docket 1083, and that deals with the foundation
16 requirement of the witness. There need not be personal
17 knowledge of that witness to authenticate the business
18 record. They only need to have knowledge of its
19 reliability, which Mr. Baer does have.

20 THE COURT: Yeah, I think my question was directed
21 to a slightly different problem, I think. He, Mr. Baer, is
22 going to say that the information received from the clients
23 is based on the client's business records, and I'm concerned
24 about that last piece. How will he -- how's he going to say
25 that other than, well, they told me it was based on their

1 business records?

2 MR. ERBELE: Well, it's inherently reliable
3 because the information arises from the client's business
4 process. They're using Blaze Advisor and documenting Blaze
5 Advisor in the client's -- in the course of the client's
6 business and that is what they're conveying to Mr. Baer.
7 And so in this situation, the adoptive business rule that
8 the Eighth Circuit recognizes, that's the *Brauner* case and
9 its progeny applies.

10 THE COURT: Why don't you tell me about 1024, 1025
11 and 1028.

12 MR. ERBELE: The reason why those documents were
13 not produced during fact discovery, Your Honor, is because
14 they were not created during fact discovery. They were
15 created after the close of fact discovery, and they were
16 timely supplemented under Rule 26. And so the fact that
17 they were not produced during the pendency of fact discovery
18 is immaterial.

19 THE COURT: When were they produced to the
20 defendants?

21 MR. ERBELE: Six weeks ago, the first week of
22 January. They were also publicly available documents, and
23 they are similar types of documents as the other case
24 studies and white papers that were produced earlier.

25 THE COURT: Okay. Anything else?

1 MR. ERBELE: Nothing else, Your Honor.

2 THE COURT: Thank you, Mr. Erbele.

3 Mr. Fleming, I'll give you the last word, if you
4 want to come back up.

5 MR. FLEMING: Your Honor, virtually looking at the
6 date of those three documents, 1028 is dated February 2021.
7 The Forrester report.

8 And two other points, one with regard to
9 foundation with regard to 295 in particular. I inquired of
10 Mr. Baer as to the foundation for that, and he said he
11 didn't know whether it was -- analysis was based on FICO's
12 information or a third-party analysis. So at least on that
13 one he cannot provide that information.

14 And with regard to the adoptive business records,
15 it is different. With regard to, you know, documents from a
16 foreclosure file or royalty statements, that's one thing,
17 but the issue is that exception is allowed when the entity
18 has a business motivation to ensure that the third party's
19 record is accurate. There's no reason to believe that.

20 And it's the same with the white papers. FICO has
21 no business motivation to ensure the accuracy of the success
22 stories. They are using it to sell the product. It's the
23 opposite. They're not going to say anything negative about
24 it. They're not going to take any steps to ensure that
25 positive information is verified in any way. It's different

1 than the other types of record, which have been included in
2 this adoptive business record exception.

3 THE COURT: Okay. Thank you.

4 MR. ERBELE: Your Honor, may I briefly respond?

5 THE COURT: Come on up.

6 MR. ERBELE: Thank you.

7 So the touchstone of these adoptive business
8 record cases is reliability. Did the custodian, here FICO,
9 rely on the accuracy of the documents in the course of its
10 business? The answer is yes. FICO distributes these
11 documents to prospective clients in the ordinary course of
12 its marketing business and ensures that the information
13 received from its clients is accurate, and it relies on the
14 accuracy of the information in distributing this. If it was
15 distributing inaccurate benefits regarding -- inaccurate
16 information regarding the benefits of Blaze Advisor, that
17 would reflect negatively on FICO not positively because the
18 customers it was selling Blaze Advisor to or licensing in
19 this case, would not be able to realize these. So it is in
20 FICO's best interests to ensure the accuracy of them. That
21 reliability component underlies all of these adoptive
22 business record cases, and it is met here.

23 THE COURT: Thank you, Mr. Erbele. We're going to
24 take a brief break. I'll be back before 1:30. I'll let you
25 know what we're going to do. Thanks.

(Recess taken at 1:20 p.m.)

THE COURT: Here's what I'm going to do for now: I'm going to -- there's a couple of other things I want to look at before I tell you conclusively what my ruling will be. So I'll let you know over the break in the afternoon, and at that time, frankly, if Mr. Hinderaker, you're able to say, you know what, we're not going to get to it today, more time is better.

I will give you my -- a few preliminary thoughts. If they come in, one thing I'm going to order is that the quotations from clients be redacted out of the documents. I don't think those are -- we don't have the foundation to establish the statement out of court by the client that it's a summary somehow of the business records, and it's pretty straight-up hearsay.

If they come in or if some of them come in, then they'd be redacted of those remarks, but the conclusions and analysis of the consultant or the white paper may come in. But I'm still going to look at that a little bit further.

On the documents that were produced by way of supplementation six weeks ago, I'm inclined to exclude those for a number of reasons. One, it's not the same kind of a thing where you have an ongoing infringement and you have to update and supplement all the way up to trial. These documents were produced -- or written, copyrighted at least,

1 in 2021. It's 2023 that they were produced, or late 2022,
2 so not as timely as it could have been. And there's the
3 other issue of having been created post-discovery, I,
4 frankly, have some concern that they could be created for
5 the wrong reasons.

6 So those three I'm inclined to exclude. I'm going
7 to look carefully again at the consulting reports and the
8 white paper, and I'll give you, you know, a conclusive
9 ruling by the break or before we begin after the fact, okay?
10 All right.

11 MR. HINDERAKER: Your Honor, there is a witness
12 between Mr. Baseman and Mr. Baer.

13 THE COURT: Okay.

14 MR. HINDERAKER: So just in terms of the timing
15 considerations.

16 THE COURT: Well, that's helpful. Honestly,
17 I'll -- this is a big issue. It's an important issue. I
18 want to get it right. It's one that if we have the luxury
19 of time, and I can read more carefully and look more
20 carefully at the documents and the cases, I would prefer
21 that.

22 All right. Anything else before we bring in the
23 jury?

24 All right. Why don't you go ahead and get them.

25 **IN OPEN COURT**

1 THE COURT: All right. Mr. Hinderaker and
2 Mr. Baseman, come on back up.

3 And remember, Mr. Baseman, you're still under
4 oath, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right.

7 BY MR. HINDERAKER:

8 Q. Okay. Settled? All right. Welcome back.

9 A. Thank you.

10 Q. I'd like to kind of did as we said, kind of just jumped
11 in. I'd like to back up a little bit.

12 A. Of course.

13 Q. You told us that you were at FICO for the last 20 years.
14 I'd like the jury to understand what your experience was,
15 your professional experience was before FICO, if you could
16 give us that overview.

17 A. Yes, thank you. So prior to FICO, I was one of these
18 children that were gifted a computer when they were quite
19 young, and I started building gaming systems and
20 communication systems as a hobby and were selling these
21 things to other companies as a kid. And then that morphed
22 into -- at the time it was pre-sort of super Internet, but
23 building websites and things like that.

24 After that, it progressed into doing work for the
25 Department of Defense in essentially designing systems for

1 nuclear submarines and how they operated and take care of
2 the people in the field.

3 From that, it morphed into an integration
4 consulting job, where I would work with customers on how to
5 integrate complex systems in the computers, which then I
6 started working with FICO through -- through an acquisition
7 that FICO acquired one of the companies that I was working
8 for, which my world changed dramatically.

9 Q. What does it mean to integrate complex systems? I guess
10 I understand complex systems, but integrate into what?

11 A. Great, great, great question. So, you know, typical
12 computer systems are made up of hundreds, if not thousands,
13 of various other computer systems that do very specific
14 jobs. And a lot of times we would help customers figure out
15 how to bring data from one system in one format and present
16 it in another system in another format. And a lot of times
17 we would build applications from scratch on how to use that
18 data for particular things. Most of the work that I did in
19 that time was around marketing and how to target specific
20 individuals around activities.

21 Q. Was this your time at Braun Consulting?

22 A. Braun Consulting prior to that. And another company I
23 worked prior to that was a company called netNumina and
24 there we were working with a lot of pharmaceutical company
25 website launches, essentially what we were doing.

1 Q. Thank you. And then from Braun Consulting, your next
2 stop was FICO?

3 A. From Braun Consulting, yes. So Braun consulting was
4 acquired by FICO and that's when I was interjected into the
5 FICO system, yes.

6 Q. And that launch -- we started to talk about your
7 experience in the insurance industry. And before we get to
8 your experience with Chubb, I'd like to go back to that for
9 a moment.

10 Can you -- so that we can understand that
11 experience, can you give us an example of a solution that an
12 insurance company wanted to solve, a problem --

13 A. Yes, I can.

14 Q. -- a problem that the insurance company wanted to solve
15 in which you used Blaze Advisor as a solution?

16 A. Absolutely. So as I stated before, right, a lot of the
17 job that I did -- well, the multiple jobs that I did within
18 FICO were first in an implementation perspective, which is
19 how do you actually develop the Blaze Advisor projects with
20 the customers. But that morphed quite significantly as I
21 gained more and more experience with the product and the
22 company in the multiple industries that I worked with.

23 Now, you know, understand that in my role I
24 crossed multiple industries. It all had very similar
25 problems. Insurance in particular, a lot of the problems

1 that the customers -- insurance companies, large insurance
2 companies or reinsurance companies, which are essentially
3 companies that resell insurance products, is their number
4 one primary objective that they typically would do is to
5 provide more policies for individuals, right? To be able to
6 provide insurance for a larger set of the population.

7 Q. And so that was a business challenge, a business problem
8 that you had experience with?

9 A. That is correct.

10 Q. Did you use Blaze Advisor to solve that for the
11 client or for the company?

12 A. Yes, we did.

13 Q. And tell us about that then, please.

14 A. Yes. So in these -- in these problem statements of how
15 do I provide more insurance products for a larger group of
16 customers, which most of the time are like you and me, they
17 have to do various different steps along the way, right?
18 They first have to evaluate who their customer is, right?
19 And there's a lot of criteria that goes into understanding
20 you as an individual, right? How old you are? Where do you
21 live? Sort of those type of criterias, and in various
22 countries and regions, there's various degrees of criteria
23 that go into it. But in the United States, it's very
24 specific about what they do.

25 But in order to do that, they also have to take

1 what sits in a lot of these large corporations, hundreds, if
2 not thousands of business users, right? And what we
3 classify as business users are the non-technical experts
4 that understand the mechanics and the logic that goes behind
5 what it would mean to approve insurance to somebody and what
6 product fits their needs with respect to the risk implied
7 for the insurance company associated with those products,
8 right? So you kind of have to do a mix of who are you?

9 What do you need? What do you look at? What do we have?
10 Based on these mix of criterias, what's the best offer for
11 you? What is the best that will actually serve your needs?

12 And in order to do that, this knowledge typically
13 sits in people's heads, right? This knowledge sits in
14 people's heads. It sits in policy books. Common, you know,
15 experience, we can say.

16 But to expand that out, typically what you have to
17 do is first identify what all of that logic is, right? And
18 you have to identify what all of that logic is for various
19 different reasons, right?

20 First is, is it ethical and legal of what our
21 actual decision criteria is on this person? So in order to
22 appreciate that, you have to actually document what that
23 logic is. Well, that's one step. So once you document what
24 that logic is and you actually configure what that logic is,
25 you have the next problem.

1 Well, now if I'm going to expand to a water -- a
2 wider group of an audience, I have to take more data from
3 various different places and I have to bring that data in
4 and evaluate that data, right? Because it's all computer
5 systems behind the scenes. So you have to take that data,
6 bring that data in a usable format and evaluate it in a
7 consistent fashion, the outcome of what that actual decision
8 is, and there's various steps in what that would look like.
9 And Blaze Advisor would sit in that environment as -- we
10 like to sort of refer to it as the brain, if you will, and
11 the brain is, well, I know all of the stuff that's going on,
12 but I have to put some rigor into the actual process because
13 I'm making certain decisions in parallel, I'm going out and
14 getting additional information, and I need to bring all of
15 that into a consistent way and then make the right
16 consistent decision for multiple parameters, right?

17 Because one policy says, I can give insurance to
18 everybody. Well, unfortunately, that's not necessarily
19 profitable all the time, right, so you have to be able to
20 wait certain outcomes and risk appetite across the
21 organization.

22 So Blaze Advisor first starts with documenting in
23 a central place what all of that logic is. There's a lot of
24 tools that we do in the management of that information,
25 which I think we'll get to later, so I don't want to jump

too far in the mechanics of that, but the other thing that it does is it actually provides the engine. So think of it as the actual container of the software code that runs based off of this human logic, because humans think in English, for the most part. At least here in the United States, they can think in pictures. They don't necessarily think in programming language, so you have to kind of convert it to that. And Blaze Advisor then takes this data, choreographs all of this different data in the context of which decision I'm making and makes a repeatable decision automated.

Q. And when you were working with that customer, client, did the client experience the solution to the problem it was trying to achieve?

A. Absolutely, yes. So there's multiple depths to the problem that they're trying to achieve, right? So on one hand, there's the, I would like to ensure -- I would like to ensure more people, right, which is grow business, essentially, right? They're all here for profit at the end of the day. Well, there's multiple dimensions to the profit. So not only do I need customers, but I also need to make sure that that relationship is profitable within those customers. So Blaze Advisor puts those constructs of what the rules and the logic are to make those repeated decisions transparent to the process.

Q. What's the value -- well, let me back up. I want to

1 come back to the transparency. But before doing that, what
2 are the components within Blaze Advisor that are
3 accomplishing what you just described regarding taking the
4 information of whatever number of business users, however
5 they're in heads or policy books or however spread, what's
6 the component or tool in Blaze Advisor that centralizes that
7 information?

8 A. So Blaze Advisor itself is a complicated set of software
9 components, right? You think of it as not a single entity
10 that does all things in a box, if you will. There starts
11 with at the core of the architecture or how the software
12 make-up of Blaze Advisor is something called a repository,
13 right? And essentially this repository is a structured way
14 upon which all of these rules, logic, business processes,
15 rule processes are stored.

16 From that repository, there are multiple ways upon
17 which both business users and technical users interface with
18 this logic. The first piece is through what is
19 affectionately known as an integrated development
20 environment, so think of that as your programmer interface,
21 right? Your programmer interface into Blaze Advisor is
22 where technologists do things like define data types, define
23 the framework upon which the data -- because you can't just
24 have random data pass into this. It has to be in a
25 well-formed structure. It has to match what you're

1 expecting it to be. In that there's some conversion from
2 technical terms to business terms, right?

3 So, for example, business users think of age,
4 right? Age is a pretty easy one to understand, but the data
5 elements that are associated with determining age can be
6 quite complex sometimes, especially as you go
7 internationally.

8 In that technical interface, you develop through
9 the generation from within the projects a, what we refer to
10 as a rule maintenance application, and the rule maintenance
11 application is a web-based front end that allows
12 non-technical users to interface with their logic. So
13 they're actually writing rules in English for the most part.
14 They're using pictures. Think most of us have probably seen
15 something like Excel, a table-type view, and there's other
16 graphical representations, which I'm sure you'll hear about
17 in other conversations. And that's delivered to the
18 business user. So the business user can now have a view
19 into the rules within guardrails of what the technical
20 infrastructure is in place to support that decision
21 attention. And they actually define their decisions.

22 So I want to make X, Y, Z decision based upon this
23 particular element, and they have very usable interface to
24 do things, right? And that's write rules, manage rules,
25 check things out, change them, make sure that I am approved

1 to do that. So we put life cycle in that component.
2 There's also tools around verifying those rules to make sure
3 that I wrote rules that didn't break the system, right?
4 Because humans don't necessarily think all the mitigating
5 factors that go into various data, what happens if data
6 doesn't exist? What happens with all of this? So you put
7 the rails in place to make sure that, and Blaze Advisor
8 automates all of that, so in this particular case, insurance
9 agents, don't have to think about the underlying technology
10 that happens. And that's presented in a web format that
11 they can log in, verify, test, and there is some visual
12 tools that allow them --

13 THE COURT: Excuse me. Mr. Baseman, just you have
14 a tendency sometimes once you get going to speak a little
15 bit too quickly. The court reporter has got to take it
16 down, so just slow down a little bit, okay?

17 THE WITNESS: All right. I will try.

18 THE COURT: Thank you.

19 THE WITNESS: I do tend to speak fast sometimes,
20 especially when I'm nervous. So, as you can imagine, this
21 is not pleasant.

22 So the other component that's related here is what
23 we refer to as the deployment component or the execution
24 component, right? And Blaze Advisor takes all of this
25 logic, wraps it up in a software bundle and then delivers it

1 in various ways to actually interact with that data. So
2 that would be the architecture of what Blaze Advisor is.

3 BY MR. HINDERAKER:

4 Q. And going back to the -- going back to the particular
5 experience within the insurance customer, were you able to
6 measure at all the extent of difference between the problem
7 before Blaze Advisor was deployed and after?

8 A. So we are able to achieve -- we are able to observe
9 various ways to validate that the goals have been met
10 through Blaze Advisor. We do that in a couple different
11 ways, right?

12 So, as I started earlier, but I don't believe I
13 finished the thought was, you know, yes, we have one problem
14 statement that says, I want to want -- excuse me, I want to
15 onboard more customers. Well, we have a very easy metric
16 that says before we use Blaze Advisor and after we use Blaze
17 Advisor, we onboarded say 500 a month and then after Blaze
18 Advisor we're able to go to 10,000 a month, right, and these
19 are sort of within the realm of numbers they're looking for.

20 Another measurable view of the problem statement
21 is a lot of customers come and say, well, not only do I want
22 to add more policies, but I want to add more policies with
23 less human intervention, right? So before Blaze Advisor you
24 would have, let's just say, 500 case managers. They would
25 manually evaluate this data, they would look at it, they

1 would run through rules. It would be a lengthy process. It
2 could sometimes take days or weeks depending on, you know,
3 the complexity of what things are doing, and they say, I
4 would like to automate 80 percent of my decisions, right?
5 So we have a very measurable achievement that says before
6 Blaze Advisor I was manually intervening with a hundred
7 percent. After Blaze Advisor, only 20 percent of those were
8 manual intervention. And Blaze Advisor gives the rules and
9 the outcomes that say, yep, I with confidence -- this is the
10 engine speaking -- with confidence, you meet all of my
11 criteria through this complex set of rules. Automate, move
12 on to the next stage of the process. Or a human needs to
13 look at this and actually add some compassion or logic or
14 some other type of element to the process as well.

15 Q. In this interaction with the customers, do you have
16 something that's called a POW, a Proof of Value
17 demonstration?

18 A. So in the sales process, right, so Blaze Advisor is not
19 a typical software product where you have your sort of
20 typical sales process where a customer calls and says, I
21 would like to buy 50 of your beautiful software components
22 and the price is X, right, and ship it out. They come and
23 say, I have a problem to solve. I need to be sure that it
24 actually solved the problem I'm looking for. And we break
25 those down in the initial process of what we would classify

1 as a proof of value and then a proof of concept, right? So
2 depending on where customers are in this curve, they would
3 be, well, first, can I actually use Blaze Advisor in my
4 systems today? So that would be a proof of concept. So
5 that would mostly be a technical task where we have Blaze
6 Advisor and, yes, we can run it in that environment and
7 there would be some criteria around performance and data,
8 pay load sizes, things like that.

9 And then there's the proof of value. And the
10 proof of value is my end metric is I want to automate 80
11 percent of my decisions. Can I actually articulate my logic
12 in business rules and automate those and measure that
13 performance? And we would do small samples of the problem
14 set, not the big problem set, but you would take small to
15 give an illustration of how it would provide value in those
16 situations.

17 Q. So have you had experience where indeed through a proof
18 of value concept or the business company, the insurance
19 company getting back to you after deployment, can you say,
20 as a matter of fact, that these kind of changes in
21 performance were accomplished using Blaze Advisor?

22 A. Absolutely, yes.

23 Q. Is this decision-making that's automated through Blaze
24 Advisor, the same as human decision-making?

25 A. It is not the same as human decision-making. It's

1 augmented and better than human decision-making.

2 Q. And why is it better than human decision-making?

3 A. Humans, people, have emotions. They have perspectives.
4 They have best practices that they follow, gut feelings,
5 right? Now, these are valuable in a lot of cases, right?
6 I'm not minimizing the value of that. But in highly
7 regulated industries, such as banking and insurance and
8 financial services, I need to be able to, without a doubt,
9 prove exactly what rules I used at a particular point in
10 time that I actually made that decision. Was it an ethical
11 decision? Was it a repeatable decision? Seven years from
12 now, can I go back and prove that that's exactly the
13 decision I made based on that because there's other
14 behavior? And Blaze Advisor allows them to do that.

15 It also allows them flexibility that once they
16 create the -- what we call the framework of the decision,
17 and I won't go into some of the nuanced terminology that we
18 use there, but once I have the framework of a decision, I
19 can now go beyond the type of decisions I was making prior.
20 I can actually start to change certain values. I can start
21 to be more competitive in certain things and not have to go
22 in and revamp my whole policies and procedures. And then
23 with the press of a button create documentation that says
24 here are all my rules, here's all the states that they go,
25 and there's other visual tools that will actually show how

1 that transverses through the trees.

2 Q. Okay. I think you've just described the ability to
3 audit decision-making and audit your rule sets, correct?

4 A. Correct. Audit and document.

5 Q. And document?

6 A. Correct.

7 Q. And I think you described -- you used the word
8 "flexibility." Does that -- do you also use the word
9 agility for that function or that feature?

10 A. So markets change. The world changes. Competitive
11 markets change. Product matrixes change. You know, how
12 they actually compose products change. I mean, essentially
13 the end of an insurance product is pricing based off of
14 particular risk criteria, right?

15 So as you're able to centralize this logic, you
16 can actually come up with new ways of new products and new
17 offers and, you know, think of higher risk individuals,
18 right? Because we want everybody to be protected to some
19 degree, but there's risk associated with that protection.
20 So they want to be able to add new extension points to that
21 logic that's still within the process that says, you know,
22 we accept this risk in these particular criteria, so that's
23 almost creating new products. And then not having to go
24 back through the whole IT cycle, they're literally able to
25 operationalize is the word we use, but that's essentially

1 bring it from inception to code and running in a matter of
2 minutes versus months or years depending on some of these
3 large corporations' life cycles.

4 Q. So you used the word "logic." Can you translate that
5 into a -- what does that mean?

6 A. Sure, sure. So logic in the simplest term is -- we use
7 here it's not a good word. Logic is essentially the
8 know-how that I have, right, as a person. I know that if
9 this is present and this is present and a combination of
10 this yields this type of result. That's logic.

11 Q. And so the logic then gets into the rules repository --

12 A. Logic becomes rules.

13 Q. -- in the ways you described?

14 A. In the ways that we described, correct.

15 Q. And you mentioned the word "product," and I take it that
16 means an insurance product?

17 A. In this context, I'm referring to an insurance product.

18 Q. And then you used the word "operationalize."

19 A. Correct.

20 Q. So how does Blaze Advisor operationalize what you call
21 the business logic of a customer?

22 A. Yes. So another thing to understand is these aren't
23 simple -- the word we use is a decision strategy, and I'll
24 explain what that is.

25 So a rule is one element of it. A rule is

1 essentially if X is greater than Y, do 1, right? And then
2 you have various criteria of that. Well, these processes
3 aren't simple. There's literally thousands of these points
4 and sometimes tens of thousands of these that you have to
5 bring together at the particular point that you're going to
6 make that decision, because a rule and logic has no use
7 unless you're actually making a decision, right, and that
8 decision is a customer comes and applies for a policy. My
9 decision is yes. The next decision is is what product is
10 offered, and then there's other steps that go with that.

11 So what Blaze Advisor does is, through the
12 software itself, is it takes these rules that are
13 represented in English, in pictures, and it breaks them down
14 into code and generates a code library that then is deployed
15 into the customer's existing technology environment that
16 actually makes those decisions.

17 Q. I want to pull up a graphic and see if this helps us.

18 MR. HINDERAKER: Bill, can you pull up slide 3.

19 BY MR. HINDERAKER:

20 Q. Can we use that to get some imagery around what you're
21 just describing?

22 A. We can.

23 Q. So you're talking -- I need a decision made. That's our
24 customer -- or why don't you go through and tell us what
25 this says.

1 A. Okay. There are several pieces to sort of highlight in
2 this picture. The first piece -- the first piece to
3 highlight is I talked a little bit before about the sort of
4 multiple components that make up Blaze Advisor. We talked
5 about the repository. We talked about the rule maintenance
6 application, and we talk about the ID. And this diagram
7 will simplify that and say, the business rules in the
8 oval-looking red box in the bottom is the logic and the
9 rules in their storage mechanism.

10 The Blaze Advisor rule service component, right,
11 is the piece of software that actually has taken that logic,
12 and I'll keep it at that level for this conversation, that
13 is then deployed into an existing application. So if you
14 look at the dark blue box at the bottom that says, your
15 application server or web server, is essentially you're
16 existing infrastructure. We're not requiring you to build a
17 whole set of infrastructure around us. That sits with
18 inside yours.

19 The I-need-a-decision-made component could be a
20 couple different things, right? So that could be the
21 service entry point. That could be the web application
22 that's actually collecting the information from the
23 customer. So think of, I fill out a web form; I click a
24 button. That's the decision I want to make. So that data
25 is then passed into the Blaze Advisor rule service component

1 that is thus evaluated the rules and uses existing data to
2 augment that data process. And that's what the enterprise
3 data on the right is, well, we also require data. Insurance
4 companies have a lot of data on you. They have a lot of
5 data on everyone. They have a lot of data if you're a past
6 customer, a current customer, and other metrics that go into
7 that.

8 So Blaze Advisor will take all of the data, all of
9 the rules, work its magic, for lack of a better term, and
10 then present that back and what the decision is.

11 Q. Without human intervention?

12 A. Sorry?

13 Q. Without human intervention?

14 A. Without human intervention, that's correct.

15 Q. And what's the speed of that process?

16 A. This process?

17 Q. Yes, what you just described.

18 A. Sub-milliseconds, typically. So, typically, this
19 architecture is to describe what I mean by sub-milliseconds.
20 It's very easy to think of it in a singularity of an event,
21 like me as a consumer, right. I go to a web form. I fill
22 out some data. I hit a button. Right. We get that aspect.
23 You know, today we expect that come back in a less than a
24 second. Right.

25 But if you think about a very complex -- complex

1 system or a complex set of systems, such as an insurance
2 company, they're getting thousands if not millions of these
3 over a rapid period of time. So when I say, it's done in
4 sub-milliseconds time, which is less than a second, what I
5 say is this architecture allows thousands and millions of
6 records to be processed in less than a second, so you get a
7 scaling advantage. Where humans would take a week to do
8 one, now you can do thousands of them in a second.

9 Q. Have you had experience in applying the scaling
10 advantage from Blaze Advisor, that is the ability to handle
11 the greater volume in the insurance industry context?

12 A. Yes.

13 Q. And what has that been?

14 A. For example, in order to -- so let's take a very valid
15 insurance example, right? So today we talk about an
16 individual applying for a policy, and a business will have a
17 goal of I would like to sell more policies, right? It's a
18 rather simple metric. But behind insurance, there's
19 resellers and partners and groups that are associated with
20 all of this. And usually one of the litmus tests is in
21 order to resell these policies and expand to a broader group
22 of audience, they want to go to full population sets, right?
23 They want to go from a few hundred people, a few hundred
24 policies, to being resold across multiple different
25 organizations that will go to tens of thousands, if not

1 millions of evaluations.

2 Q. As part of the agility discussion and the rules
3 repository, is it fair to describe that as externalizing the
4 rules?

5 A. You could certainly describe that as externalizing the
6 rules. And where I would characterize that is externalizing
7 the rules is today it sits, prior to Blaze Advisor, it sits
8 in manuals and books and people's heads, right? So --

9 Q. Good. We've gone through that. And then is there a
10 distinction between the rules and the rules repository of
11 Blaze Advisor -- maybe this is what I'm asking -- a
12 distinction between the rules in Blaze Advisor and writing
13 those rules in the software applications themselves,
14 so-called hard --

15 A. Oh, yes, yes, yes. Okay. So a lot of question comes
16 up, well, that's great. So it's a decision process. I have
17 existing systems today. Can I do the same thing in my
18 existing applications today by just coding them directly in
19 the application today?

20 Well, the answer is, to some degree, yes, right?
21 But in reality, what that is is today those systems are --
22 there's hundreds of them, especially in an insurance
23 company. Some of them are 60 if not 70 year old technology,
24 if you think of the old mainframes and cobalt applications
25 sitting out there.

1 In order to do that, you would have to write that
2 logic in multiple places and spend months, if not years, of
3 doing integration into actually making it work within that,
4 and then you would never get the flexibility because of the
5 second you go write code directly into these systems, if you
6 ever change that, you have to go back through the whole
7 process again. And when we talk about the whole process
8 again is software development is complex, right? We don't
9 just write code and send it out, especially an insurance
10 company or a bank, right?

11 So they will write the code. They will test it.
12 They will validate it. They will move it to multiple
13 environments. They'll check it. They'll performance test
14 it. They'll do all this. So the impact is by centralizing
15 that, you externalize all of the rules and logic in a
16 central place, thus decoupling the actual implementation
17 from the business logic because business logic changes all
18 the time. Think of interest rates, right? Interest rates
19 is a very important thing. They fluctuate daily. You can't
20 go through this whole process daily to change these types of
21 parameters.

22 Q. Does Blaze Advisor enable a customer to do that?

23 A. Yes, they do, in their own terms.

24 Q. In their own terms?

25 A. Yes.

1 Q. And is that through the rules repository?

2 A. That is through the rules repository and then the
3 management system that sits on top of that that allows them
4 to organize and categorize those rules as it's relevant to
5 them.

6 Q. Is it in the management system then that the rules are
7 also tested to see if they achieve the business outcomes
8 that are desired?

9 A. Yes. So through the business rule management side of
10 the equation is just writing a rule is -- that's -- you know
11 it's quite pedestrian in itself, right? It's the rules are
12 complex and humans when they write rules, most of the time
13 write bad rules. They think they're really good, but they
14 might not actually be good. So the management system,
15 through the whole architecture, allows them to test the
16 rule -- to first make sure that it works.

17 Q. We're talking about Blaze Advisor?

18 A. Yes, Blaze Advisor itself allows our business users to
19 test their rules. Does it work? Did it break? Did I get
20 errors? Right. Okay, it worked. Well, now I want to
21 validate my outcome. Just because I've created a rule, I
22 want to be able to take sample data and run it through, did
23 I get the result that I expected? So I think I automated
24 it. But if my automated is I want to bring on more
25 policies, I write rules, and the actual fact is in my rules,

1 I get less policies? Well, something is wrong. How do I go
2 and change that without going through the whole process
3 again.

4 Q. The whole process being the hard coding?

5 A. The hard coding and rewriting everything, et cetera,
6 yes.

7 Q. Can the business user, can a customer, can the client
8 validate the outcome before it's put into the --

9 A. So that is crucial to the process, right? So you're not
10 validating in a production sense. You're validating before
11 it even goes there. So you can make sure that your rules
12 are valid before go into existing systems, and Blaze Advisor
13 offers visual representations on how this looks and pretty
14 pictures and charts and graphs that sort of you can look at
15 and validate what those look like.

16 Q. So when you're giving the example of a rule that results
17 in worst performance, that was not in a deployment context?

18 A. Correct. That's before you get to that point.

19 Q. That's in the validation process that Blaze Advisor
20 provides?

21 A. Yes.

22 Q. Let me change the topic a little bit and now have the
23 management side of -- the manager side of the Blaze Advisor
24 functionalities, and we're going to go to the automated
25 decision and functionality. In the context of a business

1 user's application, okay?

2 A. Okay.

3 Q. So Blaze Advisor is one component of the application?

4 A. Typically, yes.

5 Q. Typically. Does it matter to Blaze Advisor whether
6 there are a couple other components in the application or
7 whether there are hundreds of components or thousands of
8 other components in the application?

9 A. Not at all.

10 Q. Why not?

11 A. Because of the isolation from the underlying
12 implementation, it is completely agnostic, that means it
13 doesn't care, how many systems are providing the data, how
14 many places -- because it becomes a central location that
15 all things are brought through to it.

16 Q. And we're talking, when we say "it is a central
17 location" --

18 A. It is the decisioning component, yes.

19 Q. Of Blaze Advisor?

20 A. Of Blaze Advisor, yes.

21 Q. Is the central location?

22 A. Yes.

23 Q. And when all things are brought to it, that's all of the
24 other components of the application are brought to Blaze
25 Advisor?

1 A. Correct.

2 Q. And what does Blaze Advisor do now that all of these
3 other components are brought to it?

4 A. So without going into too much depth on the mechanics,
5 essentially it takes that data and evaluates that data in
6 multiple stages and based off of the evaluation of that
7 data, presents back the answer.

8 Q. And how are the other software components of the
9 application fired, used, triggered?

10 A. So in a large ecosystem that has multiple components,
11 there's a lot of various ways of data coming in from third
12 parties, there's a lot of systems that are supporting
13 certain things, there's a lot of human work flow
14 applications on how all this comes together.

15 So Blaze Advisor is the central point upon which
16 the next action is decided off of all of those components.
17 So Blaze Advisor would be the system that tells all the
18 other systems what to do based off of its decision.

19 Q. Okay. So is that your analogy to the central nervous
20 system?

21 A. That would be, yes.

22 Q. The commands to all the other systems are coming from
23 Blaze Advisor; is that right?

24 A. They are -- it is a bidirectional relationship, so other
25 systems are sending data into Blaze Advisor, and Blaze

1 Advisor is sending data back into these other systems. And
2 in that data that we send back is the actual decision of
3 what the next step and the next actions are.

4 Q. I see. Okay.

5 So that's the complex application. Let's talk for
6 a moment about Blaze Advisor in the context of the legacy
7 systems of the insurance company or any company. How does
8 Blaze Advisor -- how is Blaze Advisor used in the context of
9 the legacy systems of a company?

10 A. Okay. So let's first define what we mean by a legacy
11 system.

12 Q. Yes, thank you. I should have done that.

13 A. Essentially, a legacy system is an old piece of software
14 that's sitting around, right? So if you think of like an
15 insurance company, they typically have multiple computer
16 systems that have been around for 30 and 40 years, right?
17 These systems do what they do very well. There is typically
18 nothing wrong with them.

19 The problem is is this older technology is very
20 rigid for various reasons, right? One is its antiquated
21 technology that's sort of based off of the paradigm that it
22 was built in, doesn't allow for much flexibility. Others is
23 it's been modified through decades of changes so nobody can
24 really find and find the place where to change things. So
25 what Blaze Advisor allows our customers to do is extend the

1 use of those legacy systems by providing new capabilities in
2 the context of what business problems are trying to solve in
3 a technology-neutral fashion, meaning Blaze Advisor doesn't
4 care what the underlying systems are.

5 Q. How does Blaze Advisor add value to the existing legacy
6 systems?

7 A. Because you can't extend easily the data that comes into
8 those existing systems or how you actually evaluate those
9 existing systems. So by sitting on top of it or next to it,
10 it actually will extend what it's doing by making decisions
11 and adding onto different decisions that can feed back into
12 that existing process.

13 Q. Got it. Okay.

14 Let me turn to -- we're in the application
15 context. Let me discuss the situation where the
16 decision-making that's necessary is complex.

17 In your experience, how does Blaze Advisor compare
18 in making complex decision-making -- now, I'm not talking
19 about scale at the moment --

20 A. Yes.

21 Q. -- because we know about volume, but just one decision
22 to be made and it's a complex decision.

23 A. Yes.

24 Q. Does Blaze Advisor bring value to that decision-making
25 process that isn't available purely from a human?

1 A. Yes, it does.

2 Q. What are those values?

3 A. Sorry. Yes, it does.

4 So we talked a little bit earlier about, well, a
5 rule is a rule, right, and typically there's thousands of
6 these rules. But the overall decision is a relationship of
7 how all of the outcomes of these individual rules are
8 weighted in the context of what decision I'm trying to make.
9 So if you look at a large organization where humans would do
10 it, you would typically have divisions, right? You have a
11 pricing division. You have a product division. You have an
12 underwriting division. All of these people are experts in
13 their particular world view of what logic they have.

14 In order to coordinate all of that, it's very
15 difficult to do without Blaze Advisor because what Blaze
16 Advisor allows you to do is compartmentalize that logic for
17 the individuals to work within just their context, and then
18 Blaze Advisor choreographs, think of like a dance, right?
19 The choreographer is telling them to dance over here, dance
20 over here. And if one dancer is just dancing, it doesn't
21 put the whole show together.

22 So it allows all of the different actors to come
23 together and weight out what that individual decision is in
24 that particular context. So that they can think in smaller,
25 manageable pieces but then Blaze Advisor ties it all

1 together in one complex flow.

2 Q. And when it ties it all together in a complex form, to
3 what end is that put?

4 A. In what end is that put?

5 Q. To what end is that all tied together in a complex form
6 in Blaze Advisor?

7 A. So --

8 Q. I'm asking, does it then make a decision?

9 A. So the end result is, yes, I have all of these rules,
10 but all of these rules together are useless without the
11 actual decision I'm trying to make. And then Blaze Advisor
12 puts the context around, what is the decision I'm trying to
13 make, and it choreographs all the different parts to make
14 that decision.

15 Q. In discussing how Blaze Advisor functions, is there a
16 concept called rule flow?

17 A. There is a concept called a rule flow, so --

18 Q. Excuse me. And is rule flow part of the
19 decision-making?

20 A. Rule flow is the visual representation of that
21 choreography or orchestration that I just mentioned.

22 Q. That then results in the decision?

23 A. And it results in the decision, correct.

24 Q. And what's the value to the business of having that rule
25 flow visible?

1 A. So we talk about the complexity of these decisions. By
2 having a visual representation of the flow, you can start to
3 drill down into it to look at what's only important to you
4 and sort of back up and see the whole process and then drill
5 down and look at that. It allows you to also reuse those,
6 so you can define one and you can embed those into either
7 rule flows and more complex rule flows, so you can actually
8 create these very nested trees, is the word we use, for them
9 off of the rule flow. So it models the business process in
10 the form of decisions by utilizing the rules to do that.

11 Q. What's the purpose of that for the business?

12 A. The purpose of that is for the business, yes.

13 Q. And why does the business care to have that?

14 A. Because they can not visualize all the thousands of
15 rules and thousands of complex micro decisions without that
16 visualization.

17 Q. And what value comes from being able to visualize it?

18 A. It allows them to have an ability to change, extend, and
19 document exactly what's happening and ensure that when that
20 is actually executed, that it is executing exactly the way
21 they said it should be.

22 Q. Is the business goal to make better decisions?

23 A. They will make better decisions based off of that, yes.

24 Q. Let me turn to scoring. In the context of a Blaze

25 Advisor, what does that mean?

1 A. So scoring is, and we'll refer to this later, is what we
2 call a score metaphor, right? And if you think about how do
3 you weight the various outcome of all of these decisions,
4 right? So these the scoring, which is in the context that
5 we're talking at Blaze Advisor, is the scorecard that says,
6 I assign this result this numeric value. I assign this
7 result this numeric value. As I execute all of these rules,
8 I add up, and there's some complex math that goes into that
9 as well, but we'll just say for sake of argument it adds
10 them up. And it adds up what the outcome of all of those
11 weighted, all of those decisions are or rules, the output of
12 those rules are that gives a confidence level so that I can
13 make a broader set of decisions within a degree of
14 confidence and range that says it's -- not everything is
15 black and white. There's some gray in that area, right? So
16 we want to be able to put a mathematical computation between
17 that gray so that I can actually, with confidence, know
18 exactly why I made that decision.

19 Q. Why do you say with confidence?

20 A. Because we have traceability and reportability into what
21 metrics went into actually do that, the calculation, they're
22 all assigned, et cetera.

23 Q. Is Blaze Advisor able to accommodate decision-making
24 when all of the factors that bear on the decision aren't of
25 the same significance --

1 A. Yes.

2 Q. -- or importance?

3 A. Yes, absolutely.

4 Q. How does it do that?

5 A. Well, it allows to you weight, apply weight to what
6 those decisions are.

7 Q. And apply that weight in the process of making the
8 decision?

9 A. Apply that and make that in the process. Let's take an
10 easy example for a second, right. The easy example is I
11 don't assign insurance policy for anybody under the age of
12 18. It's a pretty easy -- easy rule, right? I get a data
13 pay load that comes in. My customer is 16 years old. I
14 have an easy answer, okay? Done.

15 Well, that gets a little more complex. That says,
16 okay, well, I've passed this particular set of criteria, but
17 now I think it's more important that my customer has
18 financial stability. I think it's more important that my
19 customer is in a particular region that I want them to be in
20 based off the product mix. So it allows them to weigh
21 certain options to be more flexible in how they actually
22 come back and make the decision.

23 Q. So if we change the scenario a little bit, Blaze Advisor
24 is a component in a business application.

25 I take it that -- let's go back to slide 3, if we

1 could. And at the bottom of the screen you have your
2 application server on the web -- you have an application
3 server or web server?

4 A. Correct, correct.

5 Q. When Blaze Advisor is a component of a business
6 application, that component is typically stored on a server?

7 A. Yes.

8 Q. And if you would define what a server is?

9 A. Yes. So server is one of those interesting terms in
10 technology, right? And what's very different about Blaze
11 Advisor and other architectures that are server-based, a lot
12 of architectures have a central server, right, which the
13 vendor provides this instance of technology, right? And all
14 things go through it.

15 Blaze Advisor is slightly different, where it
16 creates a deployable artifact that's in the code that
17 actually gets embedded in customers' existing applications,
18 which are typically on servers.

19 Q. Okay. And is there any limit to the number of users,
20 number of application users that can access that application
21 that's residing on a server?

22 A. That is one of the beautiful things about Blaze Advisor
23 is there is no theoretical limit to the number of users or
24 transactions that can be processed through it.

25 Q. So from the technology of it all, a business user is

1 accessing an application containing Blaze Advisor on a
2 server. What happens with the code, just technically?

3 A. Technically, the code is actually -- I'm trying to use
4 what terminology -- it is actually compiled, which
5 essentially means it is transformed into the lowest level of
6 programming language for that environment. So it gets
7 compiled into a package and thus then copied over into that
8 existing environment.

9 Q. Copied to where?

10 A. Typically into the memory, the RAM memory of the
11 application --

12 Q. The ram memory of the application, or the ram memory of
13 the server?

14 A. The RAM memory of the server.

15 Q. And how long does the Blaze Advisor code reside in the
16 RAM memory of the server?

17 A. As long as the configuration requires. So we have no
18 control over that. That is -- it could be indefinite.

19 Q. So is the limitation on that simply the limitation of
20 the customer server?

21 A. It is a limitation of the customer and how they've
22 developed their architecture. We have some client instances
23 where a Blaze Advisor rule server component that is embedded
24 in existing application has been up for 10, 15 years.

25 Q. And each time it's accessed for use by an underwriter or

any user, then a copy of that code goes to the RAM of the server?

A. So without going too much into the mechanics of how we manage the memory within itself, for every interaction, Blaze Advisor actually copies itself multiple times. So think, for example, if I have 1,000 applications and I'm processing through a single point, I don't just have one copy. I actually create 1,000 copies within that.

Q. Those copies are in the RAM?

A. They are in memory, yes.

Q. I see. Okay.

Could we pull up slide 4, please, Bill?

MR. HINDERAKER: Could we pull up slide 4, please, Bill.

BY MR. HINDERAKER:

Q. You've said many things. I'm not being critical. I'm just saying we've covered a lot of ground in the hour, and I'd like you to -- will this help -- can we use this as a summary of your testimony regarding the value of Blaze Advisor?

A. We can.

Q. So let's just run through the bullet points, not repeating ourselves but making sure we've touched the base.

Reduces the time and cost to develop decision-making applications. Does that relate to the

1 flexibility and agility issues that you were chatting about,
2 or more?

3 A. So reducing the time and cost to develop decision-making
4 applications has multiple perspectives. So, first, let's
5 talk about the cost of developing decision-making
6 applications. So in a traditional, I build it in my
7 existing applications, I've got a, you know, typically
8 several developers are developing. There's the cost of that
9 associated with it. There's the cost associated with the
10 time. There's the cost of the old multiple environments
11 that you have to spin up to do that. The time to develop
12 those is because we've abstracted with rails, the rules and
13 decision process for our business users, they can interact
14 directly with Blaze Advisor application to create new rules,
15 new policy, change those rules and then deploy those into
16 production in minutes as opposed to days.

17 Q. And you used the word "rails," I think was the word?

18 A. Rails is the word I used, right.

19 Q. What does it mean?

20 A. Sorry.

21 Q. No. What does that mean?

22 A. So we are all flawed, and since there are certain
23 constraints that are required to make effective decisions,
24 so think about, well, I, A, need to make sure I have the
25 data available. So that would be one rail, right?

1 Now, the other rail is I also need to make sure
2 it's performing because I can write rules that will be very
3 imperformant, not performant, very slow. Well, I want to
4 make sure that that is set up in a framework that the users
5 don't hurt themselves.

6 The other thing is as you provide more flexibility
7 and enable more creativity for the business users to
8 interact in their own language with the rules, you want to
9 make sure that they are doing it with the construct of A,
10 where they're allowed to do it and within a governance model
11 that says not only did they do it, but I can prove that, you
12 know, Jane did what she was supposed to do and sent it to
13 Stewart and Stewart approved that what he was trying to do.
14 So you have both business rails and technology rails that
15 are all encompassed in Blaze Advisor.

16 Q. The second bullet point, it has a human-usable interface
17 to write the business rule statements in English, and Blaze
18 Advisor transforms that to computer code.

19 A. Yes.

20 Q. I know we spoke about that.

21 A. We did. So the principle here is, yes, software
22 development languages or programming languages are very
23 complicated, and they're very nuanced and you require a
24 certain technology skill to be able to navigate them. It's
25 become a little easier in recent times, but it's still very

difficult.

Businesses don't think in coding language. They think in business terms, right? They think in things such as age, time of -- you know, how long has this customer been? They're not thinking of variable 1, 2, 3 on data pay load from system 4, right? So you want to be able to translate that into the terminology that they're using. So you provide an interface through pictures, because those are more powerful than writing sometimes and to be able to have them write in their own words and language what that actual rule is.

MR. HINDERAKER: Bill, would you put up number 2.

BY MR. HINDERAKER:

Q. This is an example of a simple rule set you were just mentioning?

A. Correct.

Q. Correct? I guess my question simply is this: This is the if/then statements that you and others have talked about.

So my question is this: If these five rules, if that was going to be translated into computer language, is it that simple or is it different?

A. So these simple statements here, so let's take the first one, for example, and then I'll spare you going into all of them. But let's take the first one. "If at least two

1 children satisfy age is less than 8, then set discount to
2 .25."

3 In computer terms, this would be translated --
4 right here you have a very simple statement. There's three
5 criterias that are met and I have an outcome. Well, just
6 determining the three criteria, at least two children,
7 that's actually complicated. You actually have to look at
8 the customer, all of their relationships. You have to
9 iterate through multiple data sets. You have to run
10 counters. You have to go figure that out. The software has
11 to figure that out.

12 Well, satisfy, well, I used the word satisfy here
13 is because I might want to change that to something else
14 later. And, again, the construct behind that would be very
15 complicated. So if you were to look at this in computer
16 terms, it would be if customer dot children loop count
17 number greater than, equals, right, and then what is my
18 discount? Discount of what? And then you have the other
19 models and you have to go and traverse all of that. So it
20 puts it in easier form.

21 Q. And then Blaze Advisor does the rest of the work?

22 A. And Blaze Advisor does the rest of it. So Blaze Advisor
23 will actually produce that code under the covers, right?
24 That's what it does.

25 MR. HINDERAKER: Let's go back to slide 4, Bill.

1 BY MR. HINDERAKER:

2 Q. So the third bullet point, "because it is easier and
3 faster to develop decision-making applications, new
4 applications can be developed and changes to existing
5 applications can be made faster than was possible before
6 Blaze Advisor."

7 Can you explain that, please?

8 A. Yes, I can. So as we've said before, right, to do and
9 achieve changes or create new decisioning -- new decisions
10 that you want to make, you would have to go and develop to
11 these existing applications multiple things. By having the
12 framework in Blaze Advisor, you have one place to do it.
13 You have your language that you can do it, which is faster.
14 And then since you already have all the rails in place, you
15 can deploy new ones quicker without having to go through the
16 whole process.

17 And then the next bullet point beneath that sort
18 of highlights why you would be making those changes.
19 Regulatory changes, right. Where you live here in the
20 United States, insurance laws change quite frequently. The
21 date upon which they can make a decision is quite sensitive
22 at times.

23 COURT REPORTER: I need you to slow down, please.

24 THE WITNESS: Oh, sorry. Again, I speak too fast.

25 BY MR. HINDERAKER:

1 Q. The data, oh, in the insurance industry example?

2 A. So, for example, the reasons why you would make these
3 decisions are very -- are very complex, right? You have
4 regulatory changes, right? So laws change daily across
5 various states, across various regions, across various
6 counties. So you need to be able to change very quickly
7 what your interpretation of those regulations are.

8 Competition, competitors are constantly lowering
9 prices, lowering entry points, creating new product mixes.
10 So you would like to be able to respond to that faster, but
11 not only respond to that, but you can actually be a market
12 leader that you're now driving that because you're making
13 changes faster and trying new things out to see if it's
14 working and giving you the results that you want.

15 Q. How does Blaze Advisor make it possible to make those
16 changes faster?

17 A. Through the ecosystem of the rule authoring and the
18 whole environment that we've discussed with the rails.

19 Q. The next bullet point, enhances business agility because
20 the rule statements changes can be made quickly.

21 A. The business agility part comes in to once I have the
22 framework that I can do this in, I can create whole new
23 decision areas in seconds and be able to be agile, which is
24 quick, to all of these market-leading forces.

25 Q. Next bullet point, because the rule statements for

1 decision can be changed faster, new insurance products can
2 be brought to market faster, each product being a unique set
3 of rule statements.

4 Can you explain that, please?

5 A. Yes. So typically in insurance products, there's not
6 necessarily a hard, fast, you know -- it's not a kleenex
7 box, right, like you've got various different mixes of
8 things.

9 So what the product actually is is the result of a
10 combination of rules, right? So I can have different
11 pricing metrics. I can have different population sets that
12 I want to do. So by having the foundation of the data set,
13 I can actually create whole new mixes of rules and
14 combinations to create new products or new offerings based
15 off of that.

16 Q. Next bullet point, makes faster more consistent business
17 decisions for any number of rule statements at any level of
18 complexity.

19 I'd like to break that down a little bit. What do
20 you mean by "makes faster decisions"?

21 A. So they're faster because you've automated them. So
22 remember we talked about, you know, humans interacting with
23 it. You know, you typically would go from manual review 10
24 or 20 to a day to fully automating hundreds if not thousands
25 a day, right? So you're faster that way. And just from

1 making those decisions faster.

2 Q. What do you mean by more consistent?

3 A. By consistency is I'm making the exact same decision
4 based off of that data that's repeatable and documented that
5 I've not adding any interpretation to what those decisions
6 are. It's fact. If it's this, then that. I have -- that's
7 what I've done.

8 Q. Is there any subjectivity into a decision made by a
9 Blaze Advisor?

10 A. Subjectivity?

11 Q. Subjectivity.

12 A. No, there's no subjectivity.

13 Q. Is there any biasing into a --

14 A. There is no biasing, no.

15 Q. Next one, rules statements and rule sets can be shared
16 across many applications. Let's break that down into that
17 part and then we'll go into without the need for IT
18 resources?

19 A. Yeah. This is actually one of the ongoing value that
20 our customers start to have by using Blaze Advisor.
21 Typically, customers start with a singularity of a problem,
22 right? I have one problem that I want to solve. And
23 they'll go and they'll develop the applications around it,
24 they'll make the decision points to do that.

25 Well, as they've started to do that, they've

1 realized, wait a minute, I've now collected all of these
2 rules and decisions in one place. These are the same rules
3 that I'm using over here in this line of business. Why
4 would I want to go and recreate it over here? I can just
5 use the exact same one. So it provides that ability as
6 well.

7 Q. And it goes on to say, without the need for IT resources
8 to write the rule statements into each application.

9 A. Because you've already done all the connective tissue to
10 make it work.

11 Q. And if a business wants to use its IT resources it can,
12 I suppose?

13 A. Yes, customers can choose to use IT resources,
14 absolutely, yes.

15 Q. The next bullet point, elevates all decision-making to
16 the level of the organization's top expert.

17 Tell us about that.

18 A. So in these complex organizations, you have specialists,
19 right? And specialists will know rate tables. They'll know
20 risk actuarial tables. They're very specific in what
21 they're looking at. But the key decision maker isn't
22 necessarily those individuals. They're the ones that are
23 managing the portfolio, right? My ongoing profitability
24 model. What does my product mix look like?

25 So by elevating all of these decisions in a

1 central place, the leaders, if you will, or the business
2 owners from an organization, have visibility into the whole
3 process where they never had before.

4 Q. And next bullet point, enforces consistency and
5 compliance. Let's take consistency first.

6 A. Well, consistency, since I've now taken the logic out of
7 manuals and human process and heuristics and gut feeling,
8 and I've put them in a structured format, I know for a fact
9 that I'm making the exact same decision off of the exact
10 same data time and time again, right? So I have that
11 repeatable fashion.

12 Now, that's very important in compliance because I
13 have to, as an insurance company, I have to declare to the
14 government and to the people that I'm not making decisions
15 based off of biased data, right? So being able to provide
16 proof to what that looks like.

17 Q. And I think the next bullet point, maybe I jumped ahead
18 and touched on or we've covered. Agreed?

19 A. So objective decisions based on data, not subjective
20 based on decisions. I think we've --

21 Q. We've got done. And let's go to the last one. Has
22 greater control over the results from high-volume
23 operational decisions. Let's break that down. What do you
24 mean by greater control?

25 A. So greater control has different -- different

1 dimensions, right. So let's back it up a little bit, and we
2 talk about high-volume applications. We used the
3 illustration before about a couple hundred to 500 to
4 thousands to maybe millions of decisions, right? So by
5 having the control of those aspects through Blaze Advisor, I
6 can actually introduce new concepts to subset of the
7 population that I'm working with, I can actually throttle
8 certain areas. I have the full control from a business
9 without actually having to change anything. And the beauty
10 is is Blaze Advisor doesn't care if it's 1,000 decisions
11 today and tomorrow is a million. It doesn't care, right?
12 So you have the centralized control of being able to do
13 that.

14 Q. And then it goes on, control over the results of
15 high-volume operational decisions. I think we understand
16 what high-volume is from your testimony. What do you mean
17 by operational decisions?

18 A. So operational decisions actually impact the tactical
19 decision that I'm actually making at that point in time,
20 right? So a business decision is I would like to originate
21 100 more applications a month, right? That's a
22 business-level decision.

23 The operational decision is within that context, I
24 know exactly what decision I've made within what I'm trying
25 to do so I can actually prove it down.

1 Q. And what's the technology that brings the rules of
2 decision to the point that where the decision is made and
3 something happens in the marketplace?

4 A. That's the flexibility that we talked about upfront.

5 Now, there's one angle here that's also off of the
6 ability to handle high-volume operational decisions and
7 there's a semicolon there that says "scale." The scale is
8 what's very important in these context, right? So as I
9 achieve my frontline business goal of originating more
10 customers, now I want to go after a bigger market, right?
11 So my scale changes. And then by centralized control that
12 I'm making consistently across, regardless of how many
13 providers are reselling my insurance packages, how many
14 customers are applying for that, the Blaze Advisor doesn't
15 care.

16 Q. It can scale?

17 A. It scales. Yes.

18 MR. HINDERAKER: We can take that down now.

19 BY MR. HINDERAKER:

20 Q. And let me turn now to your personal experience with
21 Chubb. Over the years, about how many meetings have you
22 had, whether in-person or Zoom or telephone?

23 A. So my interaction with Chubb was pre-Zoom, so we had a
24 lot of meetings in person and telephone. So I can recall
25 three or four meetings in person post the sale of Blaze

1 Advisor to Chubb and countless phone conversations along the
2 way.

3 Q. And in general, the purpose of those discussions --
4 well, first, who at Chubb were you speaking with?

5 A. So at various levels. So typically the conversations at
6 Chubb would be with architects, so people that were, you
7 know, in charge of the infrastructure systems. Some
8 business owner capacity that would represent the business,
9 and I'm a little fuzzy with names, so, you know, it's been a
10 long time.

11 Another set of conversations would be with Chubb
12 leadership around sort of the value of Blaze Advisor and
13 things that we're doing inside of their environment.

14 Q. So you've had -- you did, in fact, have conversations
15 with those three categories of people?

16 A. Yeah. And one more category I forgot, data analyst as
17 well. So think of the data scientist, if you will, the
18 people that are building algorithms to evaluate the
19 customer.

20 Q. Can you tell us the subject matter of these meetings in
21 general?

22 A. So the subject matter of most of the meetings were
23 around, we're using Blaze Advisor. We have new problem sets
24 that we're trying to solve. For example, one of the most
25 prevalent conversations that we've had is we have an

1 analytic model, so think of it as fancy math, right? Fancy
2 math to determine some aspect of their customer.

3 Well, in this process, they would develop these
4 analytic models over here with other data systems, but
5 taking that analytic data model and actually putting it in
6 this framework, this application that Blaze Advisor
7 provides, is complicated. So Blaze Advisor provides an
8 ability for them to ingest those models directly into this
9 overall process. So most of the conversations I had past
10 that was how Blaze Advisor and some of the remodel
11 translating techniques would support that.

12 There was also conversations around best practices
13 on growing Blaze Advisor within different problem sets and
14 the governance associated with that. So how do they
15 actually organize themselves around it, et cetera.

16 Q. Model translator, that's an add-on product to Blaze
17 Advisor?

18 A. Model translator is an add-on product to Blaze Advisor.

19 Q. So I guess I heard you say so far sometimes the
20 discussion was about additional possible FICO add-ons to
21 Blaze Advisor and other times how to better use or more
22 fully use Blaze Advisor?

23 A. That's correct.

24 Q. Okay. Did you gain an understanding of the extent to
25 which Blaze Advisor was integrated into their business at

Chubb?

A. So in those conversations, it was apparent that Blaze Advisor was central to all of their decision-making process within the group that we were talking about. And the reason why they were looking at leveraging that is because they wanted to extend other groups' works into Blaze Advisor. So it was pivotal to what they were doing.

Q. Let me focus you on some meetings in 2015, 2016.

A. Okay.

Q. So in all of your occasions of meeting with Chubb at that time frame, were you the initiator to be involved in the conversation or were you being invited?

A. No, I was always invited.

Q. They were interested in talking to you?

A. Yes.

Q. And you mentioned model translation, were they also interested in other FICO products at that time as add-ons to Blaze Advisor?

A. So they were interested in add-ons to Blaze Advisor not just in model translator but the model governance solution that we had, which is a how do I manage all of my different models? Because think -- you know, these insurance companies have thousands of these analytic models and, you know, hundreds of people that need to manage it. And the conversations were around how do we use model translator to

1 bring it into Blaze Advisor and what the best practices
2 of -- once it's in Blaze Advisor, how do we actually govern
3 that model and monitor the performance of that model over
4 time? And various times it would be roadmap conversations
5 as well. So what is FICO doing? How are you guys sort of
6 progressing products, things like that.

7 Q. They want to look forward to where FICO is going?

8 A. Absolutely.

9 Q. Were there any discussions that you were involved in
10 where the conversation was about FICO's cloud platform for
11 Blaze Advisor?

12 A. Yes.

13 Q. And what were they? And first give us a time frame, if
14 you would, if you can recall? I'm asking late 2015, early
15 2016?

16 A. Well, I think it would have been, it was definitely
17 cold, so it would have been, yeah, around 2016 in the cold.

18 Q. Okay.

19 A. And it was -- you know, they were beginning the thought
20 process around moving to cloud. Again, cloud technology was
21 very new at the time, so there was a lot of trepidation
22 around the cloud as a principle in itself. And then, you
23 know, what value would our cloud offering of Blaze Advisor
24 provide them in those situations.

25 Q. And we should now back up a little bit for all of us to

1 understand what do you mean by "cloud" and, you know, what
2 is this?

3 A. What's the easiest description of cloud? The easiest
4 description of cloud is traditionally large organizations
5 would manage all of their IT infrastructure, all the
6 thousands of computers that they run to be able to do
7 things. The cloud is a central provider through Internet
8 technology does all of that for them.

9 Q. Is it fair to say, in other words, in theory, all of the
10 IT staff of Chubb & Son becomes redundant because the IT is
11 put in the cloud and some other provider is doing that
12 work -- the work that was formerly done by in-house staff?

13 A. That is certainly one aspect. There certainly is a
14 redundancy of staff that occurs in that but really it allows
15 them to focus on more important strategic things and be more
16 transformative across the organization as opposed to just
17 keeping the lights on on old technology.

18 Q. So the cloud service provider is providing a lot of the
19 technology to keep the software running in the cloud?

20 A. Yes.

21 Q. But as -- as you said, those are just beginning
22 exploratory discussions at that point?

23 A. Yeah. So at that time it was the beginning of our cloud
24 offering, so these were partnership-based conversations
25 around here's where we're thinking of going, where are you

1 guys thinking of going? How does this sort of gel together?

2 Q. And today is that called the FICO platform, your cloud
3 offering?

4 A. That is called FICO platform, yes.

5 Q. When you were meeting with these folks, were there any
6 conversations that came up about the fact that ACE had or
7 will be acquiring the Chubb Corporation?

8 A. There were --

9 MS. GODESKY: Your Honor, may we have a sidebar?

10 THE COURT: You may. Approach.

11 MS. GODESKY: Thank you.

12 THE COURT: Remind the members of the jury, while
13 we're doing this, feel freely to stand up, stretch your
14 legs.

15 (Sidebar discussion.)

16 MS. GODESKY: Your Honor, this goes to the Rule
17 408 issue that we've been discussing. We submitted a
18 supplemental submission on this yesterday, and we have an
19 excerpt that's quoted in our submission from Mr. Baseman's
20 deposition where when he was questioned about these early
21 2016 meetings, Ms. Kliebenstein, Mr. Hinderaker's partner,
22 asserted that Rule 408 privilege should apply to all of
23 these conversations that were happening in early 2016
24 because they were set up for the express purpose of
25 settlement negotiations. It is in black and white in the

1 transcript.

2 MR. HINDERAKER: We aren't going to ask that
3 question, by the way, but go ahead. Continue.

4 MS. GODESKY: But we're probing into these
5 meetings that were set up for settlement negotiations.

6 MR. HINDERAKER: I do believe you're jumping the
7 gun.

8 MS. GODESKY: I don't know what's happening here
9 and we don't have a ruling on settlement so --

10 THE COURT: So far we're limited to meetings prior
11 to February 27.

12 MS. GODESKY: Correct.

13 THE COURT: Of 2016. Are you inquiring about a
14 meeting after that?

15 MR. HINDERAKER: Absolutely not, and I expect the
16 sum total of the testimony to be with the people he was
17 talking to, yeah, we don't know what's going to happen, so
18 let's keep on talking.

19 THE COURT: And it's pre --

20 MR. HINDERAKER: And it's pre-February -- yes, it
21 is pre-February 27th.

22 THE COURT: Okay. Then --

23 MS. GODESKY: Okay, okay. I just.

24 MR. HINDERAKER: Fair question. I wasn't going to
25 go close.

1 THE COURT: And as long as you're here on that
2 topic, if you were -- the take away was you were to file
3 whatever briefing you wanted on that topic, that's offering
4 the exhibits.

5 MR. HINDERAKER: Yes. And so the sequence has
6 been we asked the defendants, which are the documents that
7 you want to challenge? And rather than get -- and that's
8 fine. Rather than get a precise response to that, the
9 letter last night was filed about 10:00.

10 THE COURT: Okay.

11 MR. HINDERAKER: So now we know.

12 THE COURT: Now you know.

13 MR. HINDERAKER: And we'll be responding. The
14 first time that, you know, we're kind of still thinking
15 about what we're going to say, but the first time this issue
16 raises its head, I believe will be Thomas Carretta, and he's
17 not --

18 THE COURT: Next week.

19 MR. HINDERAKER: He's next week.

20 MS. GODESKY: The reason we filed the letter last
21 night is because there are designations that are marked to
22 be played on -- tomorrow from Mr. Schreiber about the
23 settlement negotiations that we've moved to exclude. So
24 that's why we thought there was a real time pressure. There
25 is designated testimony from that.

1 MR. HINDERAKER: Did you object to that?

2 MS. GODESKY: Yes. At settlement, yes.

3 MR. HINDERAKER: Well, we went through this back
4 and forth about -- we just went through a back and forth on
5 Schreiber, and this morning I read the email from your
6 people, take the confidential designation off the bottom.
7 We're going to do that, but just not showing the text. You
8 missed something on this line. We changed that. So my own
9 impression was I thought we were all kosher with that
10 because I never was alerted that there was any --

11 MS. GODESKY: Okay.

12 MR. HINDERAKER: Now, well, I'm not really aware
13 that Schreiber was -- I think Schreiber was an information
14 source. Schreiber is not part of any decision-making to do
15 anything. I mean, he's head of -- vice president of
16 insurance sales in health care, but I'm sure he was a source
17 of information, but in terms of a decision to say something
18 or not say something, he wasn't that guy. But I think what
19 I need to do then is, if you wouldn't mind, somehow key me
20 into exactly what we're talking about.

21 MS. GODESKY: Yes. So there's --

22 MR. HINDERAKER: I'm not trying to get ahead of
23 us.

24 MS. GODESKY: Sure. There's designated testimony
25 about numbers that were exchanged that we've objected to as

1 settlement related from, and I think the miscommunication
2 may have been my colleague emailed your team and said so
3 that we can narrow the issues before the Court can you do
4 these things and you agreed to do it.

5 MR. HINDERAKER: I read that as getting everything
6 fixed.

7 MS. GODESKY: Yeah, and so there is this other
8 issue.

9 MR. HINDERAKER: So if you would give me that.
10 I'm not all that sure we're going to quarrel about it, but I
11 just need to know.

12 MS. GODESKY: Okay. Sounds like this is fine.
13 Thank you, Your Honor.

14 **IN OPEN COURT**

15 BY MR. HINDERAKER:

16 Q. So I have to remember where I was.

17 So we were in, you know, late 2015, maybe early
18 2016, your meeting with the people at Chubb that are
19 involved with Blaze Advisor. I asked you if anything was --
20 any comments were made about whether the pending or recent,
21 immediate, acquisition of the Chubb Corporation by ACE. And
22 were there any at all?

23 A. Yes, there was.

24 Q. And to what extent were they?

25 A. It was a casual conversation in the hallway on the way

1 to the meeting room where the sales gentleman commented to
2 our host at the time, pretty crazy times. You know, what do
3 you guys think is going to happen? And the question was --
4 the answer was something along the lines of don't really
5 know, we're continuing on with what we're doing. We'll see
6 what happens.

7 Q. Continue to talk, huh.

8 A. Sorry?

9 Q. And did you have continuing meetings about Blaze Advisor
10 and its use at the --

11 A. Oh, absolutely. And -- yes, uh-huh.

12 Q. So now if I could turn to slide 5, please.

13 BY MR. HINDERAKER:

14 Q. From your experience of working with companies in the
15 various industries but including the insurance industry, I'd
16 like you to -- what factors do you look at to assess the
17 value of Blaze Advisor to the organization?

18 A. Yes. Value is an interesting dimension, right? And
19 when you look at Blaze Advisor and what it does, you have to
20 look at several different factors. So, first, you have to
21 look at what it is Blaze Advisor is actually doing and where
22 it sits in the organization. So, for example, what types of
23 problems is it trying to solve, right? An example would be
24 Blaze Advisor used to determine the placement of trash cans
25 is probably not as valuable to a financial institution

1 that's using it to originate customers.

2 Q. Sure.

3 A. Typically.

4 Q. Second bullet point, is Blaze Advisor used to make
5 decisions connected to revenue generating events, like
6 selling insurance?

7 Can you describe that any more fully?

8 A. So -- yeah. So when Blaze Advisor is used for -- well,
9 let me rephrase that. It's mostly used for decisions
10 connected to revenue events. It is pivotal in those
11 decision process.

12 Q. Why do you say that?

13 A. Because it is the one actually making the decisions.

14 Q. The number of decisions that are made with Blaze
15 Advisor. Any comment on that?

16 A. Yes. So when you look at articulating the value of
17 Blaze Advisor in these situations, it's a mix, right? So
18 what decision am I making? Where does it sit in the
19 organization? What type of decision am I making? Well, how
20 many decisions am I making? Because that affects the sort
21 of scale of the decisions with the context of the business
22 that's actually doing it.

23 Q. Now, you said that revenue-generating events are
24 pivotal, if the transactions are not revenue -generating
25 events, how are they related to generating -- are they at

1 all related to revenue generating --

2 A. They typically would be related at some point to revenue
3 generating event because they would be the supporting
4 decisions in an overall process.

5 Q. The next bullet point, the significance to the business
6 of the decisions, what do you mean by that?

7 A. Well, if Blaze Advisor is sitting in a position where
8 it's automating a hundred percent of its decisions and those
9 decisions are directly impacting the sale, the cost, the
10 onboarding of the customers and Blaze Advisor is pivotal in
11 that decision process.

12 Q. The next bullet point, have we covered that or is there
13 something more there? Business decisions that are core to
14 the business?

15 A. Yes. I mean, what this highlights is people don't use
16 Blaze Advisor for unimportant decisions. So there's a lot
17 of other ways to sort of skin the cat, if you will, right?
18 And you use Blaze Advisor in the management system that it
19 provides to enable those critical business decisions.

20 Q. The number of users authoring rules. What does that
21 mean and why do you measure value from it?

22 A. The value dimension for the number of users authoring
23 the rules is very significant, and it's significant because
24 whereas we talk about complex decisions and you're
25 automating those decisions where the -- let's just take an

1 example where there's three ladies that are running this
2 particular business division, right? And there's only three
3 of them. Well, the value of all of the tools that are
4 provided for the three of them to make those better
5 decisions, it's still significant, but it's not necessarily
6 the same impactful if you have a large organization with 500
7 people making the decision because automating and providing
8 all of this tooling, the more users that interact with the
9 authoring capabilities, the more value it brings.

10 Q. And what's the meaning of the last bullet point, the
11 extent Blaze Advisor is integrated into other areas of the
12 business?

13 A. So this is around, you know, I take a central set of
14 rules or logic and I integrate it into the existing
15 technology and how many different places are those same
16 rules being used?

17 So you look at supporting events as well. So I
18 have this business decision is pivotal to this
19 revenue-generating arm. I'm using the same rule set that's
20 managed here, and I'm using it over here, so now I'm getting
21 economies of scale and I'm impacting the whole enterprise as
22 opposed to just a particular division.

23 Q. So is that to say that the impact of Blaze Advisor is
24 greater on an -- in a divisional context than it is on a
25 single named application context?

1 A. Yes.

2 Q. Is the value of Blaze Advisor greater on an
3 enterprise-wide context than it is in a divisional context?

4 A. Yes.

5 MR. HINDERAKER: Thank you, Mr. Baseman. I have
6 no further questions.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Ms. Godesky, I was planning to go
9 until about 3:15 before a break. Will that be convenient
10 with your cross-examination?

11 MS. GODESKY: Sure. May I approach the witness
12 with a binder?

13 THE COURT: You may.

14 THE WITNESS: Thank you.

15 MS. GODESKY: Sure.

16 Do we have control, Your Honor?

17 THE COURT: Yep, you do.

18 **CROSS-EXAMINATION**

19 BY MS. GODESKY:

20 Q. Good afternoon. My name is Leah Godesky, and I
21 represent defendants in this case.

22 A. Good afternoon.

23 Q. You previously sat for a deposition in this litigation a
24 couple of years ago in 2021, right?

25 A. I believe it was 2021, yes.

1 Q. And that means you provided sworn testimony under
2 penalty of perjury in a conference room no different than
3 you are right now in this courtroom, right?

4 A. Correct.

5 Q. And I put in front of you, just so you know,
6 Mr. Baseman, a copy of your deposition transcript in that
7 binder, just in case we need to reference it, okay?

8 A. Okay.

9 Q. Now, you talked about how your responsibilities at FICO
10 include understanding each of the products FICO offers and
11 knowing what product is the best fit for a particular
12 customer, fair?

13 A. Correct, yes.

14 Q. And one product you work on is the cloud-based decision
15 management platform, also known as the FICO platform?

16 A. Correct.

17 Q. And you also continue to work on Blaze Advisor's
18 software projects?

19 A. Yes.

20 Q. Now, back in time to when FICO and my client were doing
21 business together, you referred to my client simply as
22 Chubb; is that fair?

23 A. That is fair.

24 Q. And you understood that Chubb was one of FICO's
25 insurance company customers, but beyond that, the particular

1 name of the entity didn't have any specific meaning to you?

2 A. No significance whatsoever.

3 Q. Now, even though you were at FICO as far back as 2004,
4 you were not involved at all in FICO's sale of Blaze to
5 Chubb back in 2006, correct?

6 A. Correct. I was in Europe at the time.

7 Q. And you do not know who ran the negotiations on that
8 contract?

9 A. I do not.

10 Q. In fact, you had not even seen the Chubb license
11 agreement before 2021 when you sat down for your deposition
12 in this case. Sound right?

13 A. I have not seen it, no. I don't recall if I've seen it
14 in 2021, but I'll -- I might have.

15 Q. So you may not have seen it ever?

16 A. I might not have seen it ever.

17 Q. And that's because as a general matter, you do not work
18 on Blaze licenses at FICO?

19 A. That is correct.

20 Q. And you are not responsible for pricing Blaze licenses?

21 A. No.

22 Q. You're aware that there is a Blaze pricing guide, but
23 you've never seen it?

24 A. The Blaze pricing guide?

25 Q. Correct.

1 A. I have seen a Blaze pricing guide, yes.

2 Q. But you don't apply it as part of your daily work?

3 That's not your job?

4 A. I do not apply it, no.

5 Q. Now, over time at FICO you have become aware of a rule

6 of thumb where if one customer uses Blaze in two or more

7 applications, FICO might discuss with the customer the

8 possibility of moving to an enterprise-wide license, fair?

9 A. That's a -- yes.

10 Q. And that's because once a customer buys a license for

11 two or three computer applications, it might make more sense

12 for them to buy an enterprise license to save some money?

13 A. Yes.

14 Q. Typically, when you talk about an enterprise Blaze

15 license, you're talking about something that's open-ended,

16 perpetual, based on customer size, and it's supposed to

17 reflect the value that Blaze brings to the company?

18 A. Yes. There is a distinction of enterprise in various

19 large organizations, but yes.

20 Q. Okay. And in terms of how Blaze works, it is not the

21 kind of software that is typically used by companies

22 successfully on its own, correct?

23 A. We have a large percentage of customers that do, in

24 fact, use Blaze Advisor with zero professional services.

25 Q. I meant not combined with other software components.

1 A. Oh, yes. No, they would certainly require other
2 software components.

3 Q. Okay. Blaze is also typically added to customers'
4 already existing computer applications, right?

5 A. Yes.

6 Q. And large companies may sometimes have hundreds of
7 different components working with Blaze in a single computer
8 application?

9 A. Yes.

10 Q. So when Blaze is used in these applications at large
11 companies like Chubb, Blaze is one component of a
12 multi-faceted complex system?

13 A. Yes.

14 Q. We can agree that when FICO sells Blaze to a client like
15 Chubb, Blaze itself does not contain the actual rules,
16 right?

17 A. Correct.

18 Q. And the actual idea of all of the rules comes from
19 humans?

20 A. Correct.

21 Q. And you testified during your direct examination that
22 Blaze Advisor provides some value to insurance companies,
23 right?

24 A. Yes.

25 Q. As a general matter, though, you agree that it would be

1 very difficult to try to measure the value that Blaze
2 provides to a particular company?

3 A. Difficult, yes, but not unachievable.

4 Q. But you personally would not be capable of quantifying
5 the value that Blaze provides to a customer?

6 A. Correct, in a monetary sense.

7 Q. So let's talk a little bit more about the world of
8 insurance. I think you said during direct that you have a
9 cursory understanding of insurance, right?

10 A. That is correct.

11 Q. That means fairly basic, right?

12 A. Agreed.

13 Q. You have never been an insurance agent or a broker?

14 A. No.

15 Q. You have never been an insurance underwriter?

16 A. No.

17 Q. You have never worked in the technology group of an
18 insurance company?

19 A. Nope.

20 Q. And you've never worked in the claims side of an
21 insurance company?

22 A. No.

23 Q. You've never held any position at an insurance company?

24 A. Nope. Only a customer.

25 Q. And you haven't conducted, as part of your work at FICO,

1 any survey of Chubb customers regarding why they purchase
2 insurance from Chubb?

3 A. Repeat the question.

4 Q. As part of your work at FICO, you haven't ever set out
5 to conduct a survey of Chubb customers to find out why
6 they're purchasing insurance from Chubb?

7 A. I have not, no.

8 Q. You don't even know what the term gross written premium
9 or GWP means, right?

10 A. I do not.

11 Q. You spoke during direct about some problem-solving
12 exercises you did for some unnamed insurance companies at
13 the beginning of your discussion with Mr. Hinderaker.

14 Do you remember that?

15 A. Yes.

16 Q. That was not specific to Chubb. That was your general
17 experience?

18 A. General experience, correct.

19 Q. And then you started talking about Chubb and you said it
20 was apparent that Blaze was central to Chubb's systems,
21 right?

22 A. Yes.

23 Q. You said it was pivotal?

24 A. Yes.

25 Q. Correct?

1 A. Correct.

2 Q. But when it comes to the use of Blaze at Chubb, you are
3 only vaguely familiar with how the software was used, right?

4 A. I was very familiar with how the software was used in
5 the context of everything else that they were doing,
6 correct. But to what actual decisions they were using it,
7 no.

8 Q. Is it true that you were only vaguely familiar with how
9 the software was used at Chubb?

10 A. Yes.

11 Q. All you knew was that Blaze may have been used in an
12 underwriting and claim fraud application, but beyond that,
13 you didn't have any intimate knowledge of how Chubb actually
14 used Blaze, correct?

15 A. Yes.

16 Q. If we could put up the fourth slide that you used during
17 your direct examination, Vanessa?

18 MR. HINDERAKER: The one that's numbered 4.

19 MS. GODESKY: Yes. Thank you.

20 BY MS. GODESKY:

21 Q. So this slide is titled "The Business Value of Blaze
22 Advisor," right, Mr. Baseman?

23 A. Yes.

24 Q. And the first bullet says, Blaze reduces the time and
25 costs to develop decision-making applications.

1 A. Yes.

2 Q. And that's a general statement, right, Mr. Baseman? You
3 have not done anything in the course of your work at FICO to
4 specifically analyze the extent to which Blaze reduced time
5 at Chubb?

6 A. Correct.

7 Q. And then your third bullet says, new applications can be
8 developed and changes to existing applications can be made
9 faster than was possible before Blaze, right?

10 A. Yes.

11 Q. But you haven't analyzed and you don't have any
12 information from the course of your work at FICO that allows
13 you to say whether it's true that new applications were
14 developed faster at Chubb because of Blaze, correct?

15 A. Not so. So we do have customers that continue
16 relationships with FICO, which they talk about how much
17 value that they've received and we have those kind of
18 conversations.

19 Q. But specifically at Chubb, you cannot identify a
20 particular application that was developed faster at Chubb
21 because of Blaze?

22 A. Only through heuristic conversations, yes.

23 Q. And you also can't measure or talk about how quickly
24 Chubb was able to make changes to its internal computer
25 applications because of Blaze. You haven't measured that,

1 right?

2 A. Of their existing ones?

3 Q. Correct.

4 A. Correct.

5 Q. Your fourth bullet says, each insurance policy requires
6 a unique set of rule statements for deciding on whether to
7 offer an applicant a policy and at what price, right?

8 A. Yes.

9 Q. But just to be clear, you have not studied the specific
10 policies that Chubb offers and figured out exactly which
11 rules were being run against which lines of business?

12 A. No.

13 Q. Your fifth bullet is Blaze enhances business agility
14 because rule statement changes can be made quickly, correct?

15 A. Yes.

16 Q. But you didn't get any information in the course of your
17 work at FICO in terms of how quickly Chubb was implementing
18 rule changes, right?

19 A. Not necessarily, no. So in the -- can I elaborate?

20 Q. Not necessarily, no, is good for now. Thank you.

21 And you also don't have any specific information
22 on whether they actually did implement rule changes at
23 various points in time, correct?

24 A. No. They certainly did make various rule changes, yes.

25 Q. Can you specifically identify rule changes that were

1 made and whether they were made faster at particular points
2 in time because of Blaze?

3 A. Only heuristically, yes.

4 Q. Your sixth bullet talks about rule statements for
5 decision can be changed faster, new insurance products can
6 be brought to market faster, each product being a unique set
7 of rule statements, right?

8 A. Correct.

9 Q. Can you specifically identify any insurance product that
10 Chubb was able to bring to market faster because of Blaze?

11 A. No.

12 Q. And based on all of this, Mr. Baseman, you are not in a
13 position to say whether Blaze had any specific impact at all
14 on Chubb's revenue or profit, correct?

15 A. Mathematically, no.

16 Q. Okay. So I want to talk about briefly what goes into
17 removing Blaze from a computer application. If a large
18 company has integrated Blaze into multiple applications, it
19 can be complex to remove the software, correct?

20 A. Potentially.

21 Q. And it could take days, months or even years to unravel
22 from internal systems, correct?

23 A. To unravel -- potentially.

24 Q. And you're saying potential because there's no typical
25 length of time. It's going to depend on the nature of the

1 company, right?

2 A. It would be dependent on the nature of how the
3 integration was done, what their software development life
4 cycles were, yes.

5 MS. GODESKY: I'm almost done, Your Honor, if I --

6 THE COURT: That's fine.

7 BY MS. GODESKY:

8 Q. Now, the amount of time you spent working on Blaze has
9 shifted over time, correct?

10 A. Yes.

11 Q. And it has declined in recent years, fair?

12 A. Yes.

13 Q. In 2016, you were spending about 80 percent of your time
14 on Blaze, right?

15 A. 2016? Yes.

16 Q. By 2021, when you'd provided deposition testimony in
17 this case, you were only spending about 10 percent of your
18 time on Blaze?

19 A. Correct.

20 Q. And that's because there was the introduction of this
21 new FICO product called Decision Modeler, the cloud-based
22 product, right?

23 A. Partially, yes.

24 Q. And for the most part, Decision Modeler, the cloud-based
25 product, and Blaze do the same things?

1 A. There are similarities.

2 Q. And just so everyone understands, this is a little
3 technical, right, but Blaze is an on-premises program,
4 right? It's not in the cloud.

5 A. Correct.

6 Q. And today most FICO customers are embracing cloud-based
7 technologies, right?

8 A. Most, yes.

9 Q. And since customers are focussed on the cloud-based
10 offerings, that's also where FICO has been focusing in
11 recent years?

12 A. Yes.

13 Q. The percentage of FICO's software revenue that is
14 attributable to Blaze has been decreasing in recent years,
15 correct?

16 A. I'd say that's fair.

17 Q. And most of the company's decision management revenue
18 now comes from that cloud-based FICO platform?

19 A. Yes.

20 Q. FICO still sells Blaze to some customers, but you've
21 said that it's better suited for small companies and
22 companies in places like Turkey and Latin America that are
23 not yet incorporating the cloud, correct?

24 A. At that time, that was -- yes, that's what I said.

25 Q. Okay. And as of 2021, when you were deposed in this

1 case, the number of Blaze customers was not increasing,
2 correct?

3 A. At that time, correct.

4 Q. Okay.

5 MS. GODESKY: Thank you. I have no further
6 questions.

7 THE COURT: All right. We'll take our afternoon
8 break. We'll plan to be back in the courtroom at 25 minutes
9 to 4:00, okay? Thank you.

10 (Jury leaves courtroom.)

11 (WITHOUT JURY PRESENT)

12 THE COURT: Mr. Hinderaker, any update on sort of
13 a time relative to Mr. Baer and some of the exhibits?

14 MR. HINDERAKER: Your Honor, I think that -- I
15 have a short redirect, but my best estimate is that -- I
16 think Mr. Marce will be our last witness today, so we won't
17 be getting to -- if we got to Mr. Baer, there would be ten
18 minutes left in the day, that sort of thing.

19 THE COURT: That's very helpful. Thank you. All
20 right. We'll be in recess until -- yes, Mr. Godesky,
21 Mr. Fleming?

22 MR. FLEMING: We've submitted a letter response to
23 FICO's arguments concerning the issues we discussed earlier
24 today.

25 THE COURT: Okay. I'll certainly look at that as

1 well.

2 MS. GODESKY: I just had a question. Does Your
3 Honor have a rule with regard to speaking to witnesses when
4 they're testifying? May we speak to witnesses when they're
5 on direct but not on cross? Are there any guardrails that
6 we both should be following?

7 THE COURT: I think the rule, right, referencing
8 the sequestration rule is once the witness is in the
9 stand --

10 MS. GODESKY: No discussion.

11 THE COURT: -- no discussion.

12 MS. GODESKY: Thank you.

13 THE COURT: Thank you. We're in recess until 25
14 minutes to 4:00.

15 (Recess taken at 3:20 p.m.)

16 IN OPEN COURT

17 (Jury seated)

18 THE COURT: Mr. Hinderaker, any redirect?

19 MR. HINDERAKER: Yes, Your Honor.

20 THE COURT: And Mr. Baseman, once again, remember
21 you're under oath.

22 THE WITNESS: Yes.

23 MR. HINDERAKER: And remember to be slow in your
24 speech.

25 THE WITNESS: That I will try.

REDIRECT EXAMINATION

BY MR. HINDERAKER:

Q. A few follow-up questions.

A. Yes, sir.

Q. Do you have any responsibility for the pricing of Blaze Advisor licenses?

A. No.

Q. Is that the responsibility primarily of Mr. Bill Waid?

A. Among others, yes.

Q. When you were asked the question about a customer with two applications considering -- having -- using Blaze Advisor for more applications --

A. Yes.

Q. -- and the wisdom of moving to an enterprise-based license --

A. Yes.

Q. -- were you assuming that -- did you give your answer in the -- under the assumption of an ongoing business relationship?

A. Yes.

Q. Have you ever had experience in setting Blaze Advisor pricing in the context where the relationship had ended and a transition license was being negotiated?

A. No.

MR. HINDERAKER: Could we put slide 4 back up? Is

1 that yours?

2 MS. GODESKY: It's Heather's.

3 BY MR. HINDERAKER:

4 Q. I'm sorry, on slide 4, do you have to be able to
5 monetize -- in your judgment, do you have to be able to
6 monetize the value of Blaze Advisor to know whether it's
7 valuable or not?

8 A. No.

9 Q. And in some answers to questions that you were asked,
10 you used -- used the phrase, heuristically or heuristic
11 conversations or only heuristically.

12 A. Yes.

13 Q. What did that mean?

14 A. Casual, inference-based, based off of the context of
15 what we were talking about. So you're able to deduce what
16 it was that they're talking about in the context of what
17 we're there to talk about.

18 Q. And what did you assume, understand, deduce, regarding
19 the value that Chubb was realizing from Blaze Advisor from
20 these conversations?

21 A. So how you're able to deduce that the Blaze Advisor
22 component is integral to the decision process is the
23 conversations that we were there to discuss around taking
24 pivotal analytic models and putting them into Blaze Advisor
25 was to get a wider use of those models across all of the

1 different systems they were using. They wouldn't have had
2 that conversation if it wasn't being used.

3 Q. A related question. Do you have to know that one thing
4 is -- do you have to know the extent that one thing is
5 faster than another to know that it's faster?

6 A. No.

7 Q. Does the fact that you were not measuring, quantifying,
8 the significance of Blaze Advisor, change your testimony
9 about slide 4 with respect to Blaze Advisor's value to the
10 business?

11 A. Not at all.

12 Q. And at the close, you were asked about information that
13 you gave in 2021 regarding Blaze Advisor sales. Do you have
14 any knowledge about the amount of success or lack of -- any
15 knowledge about Blaze Advisor sales today, the quantity, the
16 amount, the success?

17 A. Not from numbers but trajectory, yes.

18 Q. What's the trajectory?

19 A. The trajectory is it continues to sell and is, in fact,
20 picking up in Latin America and especially regions that we
21 do not have the cloud. So it is still a very viable product
22 of which customers still use.

23 MR. HINDERAKER: Thank you.

24 No further questions, Your Honor.

25 THE COURT: Thank you, Mr. Hinderaker.

1 Ms. Godesky, any re-cross?

2 MS. GODESKY: Nothing further, thank you.

3 THE COURT: All right. Thank you. Go ahead,
4 Mr. Baseman, you may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Mr. Hinderaker, or whomever, go ahead
7 and call your next witness.

8 MS. KLIEBENSTEIN: Thank you, Your Honor. We call
9 Mr. Jean-Luc Marce.

10 Your Honor, may I approach?

11 THE COURT: You may.

12 Come on up here, Mr. Marce. Good afternoon. If
13 you would raise your right hand, please.

14 **JEAN-LUC MARCE,**

15 duly sworn, was examined and testified as follows:

16

17 THE COURT: Go ahead and be seated. Make sure to
18 speak into the microphone and state your full name for the
19 record, please.

20 THE WITNESS: My name is Jean-Luc Marce,
21 M-A-R-C-E.

22 **DIRECT EXAMINATION**

23 BY MS. KLIEBENSTEIN:

24 Q. Mr. Marce, is the microphone at a comfortable spot for
25 you?

1 A. It is now.

2 Q. Thank you very much. And I have not met everyone yet.
3 My name is Heather Kliebenstein. I'm at Merchant & Gould as
4 well.

5 Mr. Marce, can you identify your current employer
6 and job title for us?

7 A. I'm a VP of software engineering at FICO.

8 Q. And how long have you worked at FICO?

9 A. Since 2002, so about 20 years.

10 Q. And today what are your primary job duties?

11 A. Today I lead a software development team responsible for
12 developing and mentoring and supporting decision technology
13 software at FICO. And I'm also leading architect for the
14 software products.

15 Q. And do you work with any particular software product
16 today at FICO?

17 A. I'm particularly focusing on Blaze Advisor.

18 Q. And can you tell the jury, in your words, what is Blaze
19 Advisor?

20 A. So Blaze Advisor is what we call a business rule
21 management system, which companies use to automate
22 decisions, automate processes and procedures they may have.
23 It helps them do that in a more efficient way and in a more
24 consistent way.

25 Q. For someone who doesn't work in IT and software

1 engineering regularly, what example can you give us to
2 explain what is a business rules management system and where
3 might a normal civilian see such a thing?

4 A. So typically normal civilian do not see the software
5 directly, but you will see it through procedures that you do
6 in your life, like applying for a job, applying for a loan,
7 buying some large products, like a car and so on. So
8 whenever we fill forms, whether it's for a bank or for the
9 insurance company, typically those companies have systems
10 behind to validate what you have entered, to make sure that
11 it's consistent, that it's -- it has the right qualification
12 for you to get that loan or to get that product.

13 And the system that they're running by those
14 banks, insurance, telecommunication companies and so on,
15 typically run software such as our software.

16 Q. And, Mr. Marce, how long have you personally been
17 working on Blaze Advisor software?

18 A. So Blaze Advisor started in 1996, and I was one of the
19 original developer and lead for Blaze Advisor, so since
20 1996, so it's 27 years.

21 Q. And 27 years, that's a long time. Why have you stuck
22 with the same software for 27 years?

23 A. So since my childhood, I always like things like things
24 like logic and puzzles. I was doing a lot of chess. So I
25 was subscribing to some magazines that where they have lots

1 of games to meet my interest. So chess and Rubik's Cube,
2 and many other logic games that I was doing. So I always
3 liked logic.

4 And for me, I also studied that in school as well.
5 I took some classes related to how to do inferencing, how to
6 do logic in different systems. And I really like it a lot
7 and when I had this opportunity to join this company to work
8 on software, which is all about automating and processing
9 logic in its pure way, that was too much of an attraction
10 for me, so I decided to join the company. It was at that
11 time Neuron Data.

12 Q. And backing up before we get into Neuron Data, did you
13 attend college, Mr. Marce?

14 A. Yes, I did.

15 Q. Where? Can you tell us?

16 A. In France, Ecole Polytechnique, which is one of their
17 premier engineering schools in France. So where I
18 studied -- it's basically a major where mathematics and
19 physics and computer science. Then I did a two-year
20 associate's degree in another school, at Telecom Paris,
21 where I study computer science, computer engineering and
22 telecommunications.

23 Q. And so I'm going to guess by that, that you grew up in
24 France; is that correct?

25 A. That's correct.

Q. And after you finished school, where was your first job?

A. So my very first job was actually back in the U.S. I had to do some internship during my school. I did some internship in a start-up called Neuron Data, and because I was so in love with what they were doing and opportunities to work on their product, in software, so I jumped on the opportunity that was given to me to come back and start there. So I started in 1991 at Neuron Data.

Q. At Neuron Data. And what were your job duties at Neuron Data back in 1991 when you started there?

A. So I started working on doing software development on various products that they had. So I joined as a senior software engineer as part of their team.

Q. Did you focus on any particular products at Neuron Data?

A. Pretty soon I started -- a few years after I joined, we started Blaze Advisor, and most of my professional experience at Neuron Data and in later companies I've been with Blaze Advisor.

Q. What year did you start working on Blaze Advisor?

A. So Blaze Advisor we started in 1996.

Q. And Neuron Data, Blaze Advisor, is that the same Blaze Advisor software that we're talking about today in court?

A. Yes, it is.

Q. And how is it that you ended up working at FICO on Blaze Advisor software too?

1 A. So Neuron Data started Blaze Advisor, so in the early
2 '90s, and then it changed its name at some point, late '90s
3 into Blaze Software. And Blaze Software, we then went to
4 some acquisitions. Blaze Software was acquired by Brokat
5 Technologies and then later was acquired by HNC Software,
6 and then HNC Software itself was acquired by Fair Isaac, now
7 called FICO.

8 Q. Were you an employed by each of those companies along
9 the way?

10 A. Yes.

11 Q. And did your job duties change in any way?

12 A. No.

13 Q. So you kept working on Blaze Advisor through each of
14 those acquisitions, correct?

15 A. That's correct.

16 Q. Now let's shift back a little bit to talk about the
17 creation of Blaze Advisor back in 1996. Could you specify
18 for us, what were your -- I know you worked on Blaze
19 Advisor, but what were your particular job duties with
20 respect to Blaze Advisor in '96?

21 A. So in '96, I had two main roles. One is I worked
22 closely with their chief architect of the company to come up
23 with a new representation of logic, a new language. We
24 started -- because one of the things we observed in the
25 prior generation of products and all the products that were

1 available at that time, most of them used a very technical
2 language. You had to use some at sign between words and you
3 have to use question marks and all kinds of punctuation
4 marks, and it was okay for technical users, but we really
5 were left leaving out the majority of target users. We are
6 more on the business side. So we really wanted to develop a
7 new language that was enabling a business user to be able
8 to -- to make best use of this tool.

9 So we started with looking at different ideas.
10 And, first of all, we started with the English language, and
11 it could have been another language, but English was our
12 primary base. And we found actually English has a lot of
13 keywords that we use on a day to day bases that can be used
14 to represent relationships between objects that can
15 represent logic itself. When you say, if something happens,
16 if such-and-such conditions are true, then other things will
17 happen. We use that commonly in language and that's kind of
18 realization decide to create this language that started from
19 English.

20 So that's one of the things that Hector, the
21 architect, to develop the ideas and come up with this
22 language. And then also I personally started doing some
23 software development on one main piece of what would become
24 Blaze Advisor later.

25 Q. And, Mr. Marce, let's just make sure we're on the same

1 page. What is logic?

2 A. So what I mean by -- what I mean by business logic, the
3 set of policies and procedures and regulations and all kinds
4 of internal reference documents that companies have to
5 direct their business. So they basically represented in
6 their own form, in their preferred form, so it could be any
7 kind of document. It could be some Word document, some --
8 maybe some spreadsheets, maybe some PDF files. So they're
9 going to create different documents that are capturing what
10 the business does and how it performs.

11 Q. And so this new language that you were creating, it was
12 a new language to represent this logic; is that right?

13 A. That's right. So when you write things in documents,
14 the document itself cannot be run and put in a machine and
15 executed. So what we did was come up with a language which
16 is close to English, so it's more familiar for business
17 users, but it's more structured in the way that it could be
18 formalized and when it's formalized, it can then be
19 processed by a machine, by software and then compiled and
20 then run. So that was a major thing, be able to capture
21 business logic in a way that enables this execution of this
22 business logic.

23 Q. And this new language that you created, did it have a
24 special name?

25 A. Yes. So we created structured rule language. Not very

1 creative, but that's what we had.

2 Q. And did this language, did this language get put into
3 Blaze Advisor?

4 A. Yes. So that's the core of Blaze Advisor is this
5 language, which is used to express any rule expressions and
6 rule logic. So it's preferable to other products. We use
7 it in authoring and design and when we process, process the
8 rules, execute the rules, they are part of their core of the
9 system.

10 Q. And just to make sure I'm understanding your word, it's
11 the core of the system?

12 A. Yes. It's really the main part of their product.

13 Q. And why did you feel the need to develop this new
14 language rather than just using a language that already
15 existed for Blaze Advisor?

16 A. So the main part is that there were really no precedent.
17 There were no existing products with or languages that were
18 business friendly and that businesses could use to write
19 such logic. So we figured out that we had to come up with
20 our own syntax and our own language.

21 Q. Was this language easy to create?

22 A. Mostly, not really, because there was no precedent, so
23 we had to figure out how to -- what other element of the
24 language that was the most beneficial. We started from the
25 pure academic, we started creating a modern language first

1 based on English and then from the modern language, modern
2 language is how you mother the word around you. What other
3 objects, what other relationships between objects. So we
4 started from that kind of language approach and then we
5 added our logic -- business logic to this language and
6 eventually it become their structured language. And there
7 was nothing on the market, no precedent at all at the time.

8 Q. Mr. Marce, besides the structure of rule language, does
9 Blaze Advisor have any additional parts in addition to the
10 structured rule language?

11 A. Yes, in addition to the language, there are four main
12 components in Blaze Advisor.

13 Q. And have you prepared a graphic that will help you
14 explain your testimony today?

15 A. Yes. So there's an architecture document that shows
16 those four components.

17 MS. KLIEBENSTEIN: Mr. Mayleben, can you bring up
18 page 1.

19 BY MS. KLIEBENSTEIN:

20 Q. Is this that graphic?

21 A. Yes.

22 Q. And to somebody who's not a software engineer, it's
23 difficult for me to read this type of graphic. Could you,
24 you know, at a 10,000-foot level, just explain what we're
25 looking at right now?

1 A. So this diagram has two main sides, two main parts. It
2 has the parts that we provide as part of a product, which
3 are the rule components on the left-hand side and with the
4 blue background. And then the right-hand shows their
5 applications that all customers did with their own
6 components, and with their own components as well. So there
7 are additional components that they are building that make
8 the whole application.

9 At some point during the execution, they will call
10 our product at least on part of their execution is using
11 that --

12 COURT REPORTER: Can you repeat that sentence?

13 THE WITNESS: Sure.

14 THE COURT: Go ahead and repeat your answer.

15 THE WITNESS: Yes. So the left-hand side contains
16 the blue components, which are the ones we provide. And the
17 right hand side show their customer application components,
18 those that our customers are building that are providing the
19 overall processing that they do on the side, there's only
20 certain parts of the applications where logic is needed.

21 BY MS. KLIEBENSTEIN:

22 Q. Mr. Marce, while you're looking at your screen down
23 there, I think you can move your microphone a little closer.
24 Sorry. I know this is not a natural setting.

25 Okay. Let's focus on the left-hand side, what's

1 in blue under rule components. Tell us what's on the
2 left-hand side of this diagram?

3 A. So we show four -- four main components, which are
4 numbered from 1 to 4 on the screen. Together, they provide
5 the whole functionality to be able to design a rule system,
6 author business rules, test business rules, and deploy
7 business rules to a server, which is where the rules will
8 run.

9 So the middle part in the orange background is a
10 rule repository. The rule repository is where we store and
11 keep track of all changes made to the rules. So other rules
12 and other objects we have. We have our tables and trees and
13 classes and objects and valuables, all those kind of
14 entities are authored and stored in that repository.

15 Q. Mr. Marce, the word repository is not something that
16 many of us use on a daily basis. Can you tell us, what is a
17 repository in your line of business?

18 A. So in addition to storing these objects, we also -- the
19 repository is responsible for tracking what changes were
20 made, by whom and when, and you can also add comments. You
21 say, I've made this change to this rule because such things,
22 one event I need to make that change. So you can keep track
23 of all changes made by any user.

24 Q. Would another way to put it be that it's a super
25 technical file folder that can store and track rules?

1 A. It's like a file system but with tracking ability.

2 Q. Thank you.

3 Now, let's move on to the red box, number 2. Can
4 you tell us, what part of Blaze Advisor is shown in the red
5 box?

6 A. So we have, in the red box, we have an IDE, which the
7 IDE stands for Integrated Development Environment, and it's
8 designed mostly for technical users or people who are more
9 architects who are going to think through what needs to be
10 bid from the business logic perspective, how to structure
11 the project, where to store it. So the repository could be
12 stored right here off Blaze, so the architect will use the
13 IDE to configure, to control where it's stored, how it's
14 configured, and as well as what is -- it will create within
15 IDE, the users would create projects, which are collections
16 of entities. And they can also create something which is
17 then used by their box, next box, they can also create rule
18 templates.

19 So rule templates. It's an interesting concept as
20 well. It's one where it's like a pre-filled rule. It's a
21 form where some part of the rules are really present, and
22 there are boxes and checked boxes and drop-downs for
23 business users to be able to make their own entries. So
24 that's IDE. It's configuration, creation of projects,
25 creation of work templates.

1 Q. So the IDE is the place where rules can be written by
2 more technical users; is that right?

3 A. Written as well as the structure of the project is
4 created typically in an IDE.

5 Q. Now let's move on to the third blue box at the top of
6 the screen titled Rule Maintenance Application, or RMA. Can
7 you tell us, what does this part of Blaze Advisor do?

8 A. So that's really the document that we provide to
9 business users is really our target, our main target. So
10 the RMA, first big difference is where is the IDE, is an
11 application running on a desktop, on a computer locally?
12 Their RMA will typically be running on the web. So it could
13 be accessed by more users, and it could be accessed from any
14 web browser.

15 And then it's where the business users will then
16 fill in their actual content, their actual logic that need
17 to be automated. They will create those business rules in
18 that RMA, and they can also test those business rules as
19 well.

20 Q. Let's move on to box number 4 at the bottom of this
21 screen, titled "Rule Server." What does the rule server do
22 in Blaze Advisor?

23 A. So the rule server is taken from, after authoring and
24 some testing, rule server is really what gets integrated
25 with their main customer application. So the rule server

1 knows how to extract the rules from the repository, so if
2 you pull the rules from that, it knows how to understand
3 those rules and be able to parse them and translate them, so
4 it's a compiler that translates those rules into a form that
5 can then be executed.

6 And then after it's done with translating rules
7 into an executable form, then it waits for the customer
8 application to send request. So you can see that actually
9 with the ROs -- within the green background, the customer
10 application will make a request to a rule server, say
11 process this application with all this information. The
12 rule server would then apply its own rules to categorize and
13 validate and approve of, that's all the processing on this
14 form. It naturally pull data from their customer database
15 itself is a way to configure the product so that it actually
16 can also retrieve data on its own and then it returns value
17 back to the customer application. It says, okay, so this
18 application is qualified because this and this was -- had
19 the right numbers and all are typical of those reasons.

20 Q. And when you just said the rule server returns a value
21 back to the application, that means it's giving an answer,
22 right?

23 A. Yes. So the application center requests and then gets
24 back from the rule server a value or the new object that
25 says it's had -- which decision it's reached.

1 Q. And for Blaze Advisor, when did development start?

2 A. So we started in 1996.

3 Q. And was Blaze Advisor developed from scratch?

4 A. Yes, from scratch.

5 Q. And how many people were working on it at the time?

6 A. So in the beginning, about 12 to 15 people.

7 Q. How many years did it take to develop Blaze Advisor, the
8 first version?

9 A. The first commercial version was in 1998, so it took two
10 years for us to get to the first major commercial version.

11 Q. And how many lines of code are in Blaze Advisor today?

12 A. A little bit over 3 million lines of code.

13 Q. So about 3 million lines of code is what's needed to
14 make the blue box on the left work; is that right?

15 A. That's right.

16 Q. So when did, I know this is Neuron Data at the time,
17 when did Neuron Data get its first paying customer?

18 A. After the first commercial version, so soon after that,
19 in 1998.

20 Q. So all of this work was done before there was a paying
21 customer for Blaze Advisor?

22 A. Right. And that's because we -- the company realized
23 that there was a strong need for this product, our language.
24 We felt that this would be a revolutionary type of product.
25 It needed some investment. So we used prior generation of

1 products essentially to fund the development of this new
2 one. And we had to make investments to make a new product.
3 That took two years and that many people.

4 Q. And how was the market reception to Blaze Advisor
5 initially?

6 A. So, from what I've been told and what I've heard, is
7 that it went very well. Prior customers as well as new
8 customers were very excited about the possibilities of using
9 this new rule language, and we had quite a few successful
10 deals right away.

11 Q. So let's imagine that a customer buys a license to Blaze
12 Advisor, how do they get a copy?

13 A. So once they purchase a license, they get their -- they
14 can download a copy from our download system.

15 Q. And I'd like to talk a little bit about how Blaze
16 Advisor gets into a customer's system and how it gets up and
17 running for a bit.

18 After installation, what are the steps -- what are
19 the steps to get Blaze Advisor up and running?

20 A. So, yeah, first, they have to install the product, and
21 that's not -- the beginning. Then they can start working
22 with their IDE to -- they typically will start with examples
23 that you provide, but pretty soon they're going to create
24 their own repository, their own projects and start --
25 designing, essentially, what their work project will be. So

1 that's the first step is their discovery and design of the
2 system.

3 Q. And I forgot to ask you a question earlier. We started
4 talking about structured rule language, the language that
5 was invented for Blaze Advisor. I don't see that anywhere
6 on the blue box titled "rule components." Where is the
7 structured rule language in this drawing?

8 A. So it's actually integral part of every one of those
9 four components. The rules are stored in the structured
10 rule language in the repository. The rule builder IDE will
11 create entities including rules in that language as well.
12 Same thing for the RMAs. So the two authoring environments
13 create rules in that language.

14 And then in the rule server, the rule server
15 understands the language as well and knows how to process
16 it. So the rule language is also known and used by the rule
17 server as well.

18 Q. Now moving us back to where I just was, you just talked
19 about the design phase. What's the next phase after design
20 when you're getting Blaze Advisor up and running?

21 A. So the normal practice is then the RMA is used by
22 business users, and business users will then fill in --
23 normal business users, it could also be subcontracted as
24 well. There's different ways to do it. But the rules are
25 then entered using the RMA into the rule repository.

1 Q. And what happens next? What's the next phase?

2 A. So there, again, best practice is to verify and test
3 before deploying. So after the rules are returned, there's
4 some tool that can be used to verify that the rules are
5 consistent and they've covered all cases, they don't
6 contradict each other. And there's also some tools that
7 provide that can validate, that can check that the rules
8 return the values that are a business expense. So there's a
9 number of tools that you provide to do this whole testing
10 and validation.

11 Q. And after testing, then what?

12 A. So then rules are really to be deployed. So that's
13 where the rule server becomes the main piece. The rules are
14 then essentially -- there's some commands that are sent to
15 the server that knows, okay, so those rules are ready to be
16 deployed. So it pulls the rules from the repository,
17 compiles them, and then waits for request to be sent. So
18 that's why we call it deployment phase.

19 Q. This case we'll be talking about rules a lot, so I want
20 to go into what is a rule and how does one write it in Blaze
21 Advisor.

22 So from your point of view, as the author of the
23 code for Blaze Advisor, what is a rule?

24 A. So a rule is -- you have to think about like a little
25 piece of logic. It's something that say under these

1 conditions, perform some actions. There's always an if
2 part, some set of conditions, and then a then part, some
3 actions.

4 Q. And how does one write a rule in Blaze Advisor?

5 A. So we actually provide -- and that's part of the
6 richness, part of the product, we provide a variety of
7 different forms of writing rules. The first form is people
8 are either in an IDE or the RMA could enter those rules in
9 that new language, that structural language. They can
10 enter -- it's a free form editors that you can directly type
11 their syntax. There's some assistance to help the
12 first-time users and even later users to create rules in the
13 right form. So that's the first form, structured rule
14 language. Should I continue?

15 Q. You know what? Why don't we just go through some
16 examples. First, I want to make sure I understood a word
17 you said at the beginning of your answer. Did you say the
18 richness of the product?

19 A. Yes. So richness of functionality. We just don't
20 provide just one form, one editor, but we provide many.

21 Q. Perfect.

22 MS. KLIEBENSTEIN: Mr. Mayleben, can you move
23 forward one slide. Thank you.

24 BY MS. KLIEBENSTEIN:

25 Q. Mr. Marce, what are we looking at now?

1 A. So this is actually the first page that a new user of
2 the IDE will see. So when they open the IDE, they will
3 first see a start page, which lets them discover
4 documentation of all the products, find examples and run
5 examples, find tutorials and then also where they can create
6 their own projects.

7 Q. So this is -- if I were an IT person working on Blaze
8 Advisor, I hit click open, this is the first screenshot I
9 would see; is that right?

10 A. That's right.

11 Q. And at a 10,000-foot level, can you tell me, not each
12 one of the icons, but, generally, what are the icons in the
13 top two rows that I see? What do those icons do generally?

14 A. So all these icons -- there's a bar at the top, and then
15 after that you have two rows of icons. So those icons are
16 used to create projects, create tables, create trees, create
17 rules, sets of rules, objects and so on. So they have
18 commands to create different things, and they also have
19 commands to run things to test things, which is mostly the
20 second row.

21 In this particular picture, nothing has been
22 opened yet, so all of those commands are visible.

23 So that's the two bars at the top and then in the
24 main program says start. You have on the left-hand side
25 different titles or tabs, going from the users projects to

1 their examples, tutorials and help. And then if it selects
2 projects, then on the right-hand side, then you see a table
3 which has, under name it has both the names of repositories,
4 so we talked about repositories earlier, so repositories are
5 things where rules are stored. So we provide -- out of the
6 box, we provide two repositories at the start so they get
7 use right away. One contains examples, so it's examples
8 repository and then the other one is a default repository.

9 And then under the examples repository, you'll see
10 a number of projects within that repository and then using
11 those links, you can directly open one of those projects.

12 MS. KLIEBENSTEIN: Mr. Mayleben, could we move
13 forward one slide.

14 BY MS. KLIEBENSTEIN:

15 Q. And we were talking about the different ways to write a
16 rule earlier and we wanted to give some examples of how to
17 write a rule.

18 A. Uh-huh.

19 Q. What are we looking at in this slide, Mr. Marce?

20 A. So this is another form of rules, so not -- the thing is
21 is that having to write SRL for every rule can be tedious if
22 you have lots of rules which have the same form. If you
23 have many rules that apply on the same properties and do the
24 same kind of action, there may be different rules, but they
25 follow the same pattern. So for that kind of case, we use

1 decision tables, which are -- represent rules in a table
2 format. A lot easier to represent a large number of rules.

3 Each main row of that table correspond to one
4 rule. And for each row you have some says, the ones that
5 are white or very light gray background, those are the
6 conditions of the rules. So if, taking the first row, if
7 the -- so here we are frankly looking at some health care
8 claim processing. So if the deductible of a policy that the
9 person has is \$600 and the claim is between zero and \$200,
10 then, and actually the next one is also a light gray, and
11 this is either an office visit or follow-up visit and the
12 network is in network, then apply this, you approve the
13 claim and you pay -- it's covered at 90 percent and it gets
14 paid to a doctor directly. That's what this kind of rules
15 say from that.

16 Q. And so for this example, this decision table would be
17 created in the IDE or the RMA or both?

18 A. Both. It can be both.

19 Q. And then when a decision needs to be made about these
20 rules, how does that work? How does Blaze Advisor use this
21 rule to answer a call?

22 A. So let's say that you have a request coming from the
23 customer application to validate a claim, some data would be
24 passed to the rule server with that information about the
25 claim. And that gets sent to this particular table and the

1 table we say, okay, so which are -- first, so we need
2 information about the claim and about the policy of their
3 health care patients. So with that information, the
4 information is compared with the values of the conditions.
5 If all the conditions in one row match, then their
6 actions -- their values in their action columns, which are
7 on the right, get applied.

8 MS. KLIEBENSTEIN: Mr. Mayleben, next slide,
9 please.

10 BY MS. KLIEBENSTEIN:

11 Q. And Mr. Marce, is this another example of how to write a
12 rule in Blaze Advisor?

13 A. Yes. So this is another form. So the first one was
14 case we had a lot of rules on the same template, same form.

15 This one is a special one that's been the main
16 stay of Fair Isaac, which is score models. So a score model
17 is where you get to look at different properties or what you
18 call characteristics and then for each characteristic,
19 you're going to calculate a score for each characteristic
20 and then when all characteristic has got the score, you add
21 the score together. So it's called an additive model. You
22 add scores.

23 So in this particular case, it's actually an
24 example of student application, so a student applying for
25 college. And they're going to submit to the college their

1 GPA, their ACT score, and a bunch of other things, so ensure
2 the whole set of characteristics. There are many more, of
3 course. And for each characteristic let's say GPA, we're
4 going to find a bucket, a bin, that the GPA falls within.
5 So if it's a very strong student, GPA between 3.6 and 4.0,
6 we assign a maximum score of 50 for the GPA. And for
7 slightly lower GPA, get a score of 30, and 25, and then if
8 it's something less, then there's no score.

9 So in addition to providing the score for each of
10 their characteristic, we also can assign a reason code. So
11 one says reason C, it's actually reason code. And what that
12 that is not in addition to reaching the final score at the
13 end, it can also give reasons why a particular person score
14 high or low on their total score is because of those
15 reasons. So it's -- we have been using that technique for
16 all the cases at FICO.

17 MS. KLIEBENSTEIN: Mr. Mayleben, may we have the
18 next slide.

19 BY MS. KLIEBENSTEIN:

20 Q. Mr. Marce, can you briefly describe what rule-writing
21 technique are we looking at on this slide?

22 A. So this is the case where the rules are written directly
23 in a structured rule language. In this case, it's an IDE.
24 And you see on the right-hand side -- so on the left-hand
25 side of this page, first of all, you see the icons on the

1 top all lit up. They're all active because we are within a
2 project. We have opened this rule server project and lots
3 of commands are now enabled.

4 And then on the left-hand side on the project, you
5 see what's inside that project. You could have tables and
6 trees and functions and rule sets and so on.

7 And then on the right-hand side, it focuses -- it
8 shows one of the rule sets in this project. And so you see
9 on the rule set on the side, on the right-hand side you see
10 it's rule set name. It's called Selection Rule Set. It
11 shows the written type, which is what kind of things it can
12 return. It has also an option for the execution mode. An
13 execution mode is something that we -- it's an advanced
14 feature that lets users control how it gets processed. So
15 it's some optimization option.

16 And then under that, under content, that's where
17 we see there are three main sections under content, three
18 items. There's a top one in the account. It's what we call
19 a pattern. Then we have two rules, one called healthy
20 account rule and minimum average not satisfy rule. And for
21 each rule, you see immediately under the name of the rules
22 you see some text which start with if something. If any
23 account's monthly average is at least 1,000, and then
24 there's some kind of formula, then do something. So this is
25 a typical rule written in a structural language.

1 Q. And, Mr. Marce, the examples that we've just looked at,
2 those are just a subset of the ways to write a rule,
3 correct?

4 A. Correct. So this is a way where you can right them
5 directly in their IDE or their RMA in that language. You
6 can also -- there's also a -- within an RMA, there's a way
7 to create graphically rules. There's a point and click
8 dialogue where you can construct rules with form instead of
9 having to write rules in every form way.

10 And then a third representation we have as well,
11 we can create what's called a rule template. A rule
12 template is one where the technical user can completely
13 customize how the rules look. Some business I used to write
14 rules in a different syntax, not this way. They may say
15 apply this policy when this condition of care. So they may
16 reverse the actions and conditions. They may use different
17 words. They may not have any words. They may just have
18 tables. And for doing this kind of interface, that's
19 possible as well. The technical user can create rule
20 templates, which are then transferred to their RMA for
21 creating customizing rule forms.

22 Q. And these techniques and forms to write rules, that's
23 what the \$3 million lines of code would do?

24 A. Yes.

25 MS. KLIEBENSTEIN: Now, if we could skip to the

1 last slide in this, Mr. Mayleben.

2 BY MS. KLIEBENSTEIN:

3 Q. After we've written our rules, what comes next? Are
4 they ready to test and deploy or does something else need to
5 happen?

6 A. So in addition to different forms of rules, so we have
7 all of them, but there's also decision trees and decision
8 graphs, and so we have quite a few different types. In
9 addition, we have a way to organize those rules, to have a
10 way to sequence which rules are applied when.

11 So that's done by what's called a decision flow,
12 which is what you see on the right right now. And the
13 decision flow specify, okay, you start from the very first
14 bubble on the left, that's the start bubble. From the
15 first -- from that first start you go to the first -- very
16 first task, which it says preliminary scoring. And this
17 preliminary scoring is done by rule set, which is one of
18 those that we saw earlier, which is a set of rules.

19 So you have a first rule set that calculates the
20 preliminary score. And then the next step you see a kind of
21 triangle shape node, that's what I call a branch, something
22 that tests a particular property, and based on how the
23 property compares to some values, you go to the top branch
24 or the bottom branch. So that's what happens here.

25 In this case, it reads as nothing on the top, and

1 if it goes to the bottom branch, it will apply another rule
2 set. And then later on you have another branch that's
3 getting into multiple branches. So you can have pretty
4 complex flows of logic. Each one contains branches as well
5 as notes of tasks that corresponds to calling a function or
6 rule set or table and rule set, trees and so on.

7 Q. These different ways -- well, let me ask a different
8 question.

9 What is the results of organized rules?

10 A. So the result of that is you're controlling the overflow
11 of logic from the time their server receives a request.
12 Typically, the first entity, the first thing that sees that
13 request, it would be a decision flow. So it knows -- okay,
14 so I get this new request. Now what do I do? So I first
15 call this rule set, then do that one, then maybe I'm done.
16 Maybe that's the end of it, and I can return the value back
17 to the request -- to the requester.

18 Q. And these different ways to write and organize the
19 rules, do you know, do the customers -- what value does that
20 add to Blaze Advisor for customers?

21 A. So that allows them to group them in a way that's one
22 logical from a business point of view and can also --
23 performs only the parts that are needed for a given
24 application.

25 Q. Switching topics to today, do you know today how many

1 people in the FICO software engineering division work on
2 Blaze Advisor?

3 A. So working on -- so Blaze Advisor has changed over time.
4 It's now part of a bigger group of products, decision
5 products. The other set of people working on the decision
6 products is about 60 people today. Some of whom worked on
7 Blaze Advisor piece only, some work on some other aspects.
8 We have another component product that's similar that's
9 based on the same source code but is delivered through the
10 cloud. And most of those 60 people work on the common code,
11 on the part that's used by the different products.

12 Q. And why does FICO have 60 people still working on the
13 code that is Blaze Advisor?

14 A. So year after year we keep adding, making changes,
15 improving -- the technology keeps changing, keep having to
16 refresh. The user face has to be made better over time.
17 We're getting requests from customers. There are some
18 issues in the product we have to fix. So all those
19 activities is constantly demanding resources to keep making
20 the product better and better year after year.

21 Q. So it's to continually improve the product, correct?

22 A. That's right.

23 Q. Mr. Marce, I'm going to walk up to hand you Exhibits
24 1139 through 1149 and 1151.

25 A. Thank you.

1 Q. And can you tell me, Mr. Marce, what did I just hand
2 you?

3 A. So these are certificates coming from the copyright
4 office of copyright registrations that we have made over the
5 years for other products -- other versions of the products.
6 So we have the first document, there are computer
7 registration for Blaze Advisor 3.0. That's the first one.

8 Next one is Blaze Advisor 4.0. We have 5.0.
9 Blaze Advisor 6.0, 6.5.5, 6.5, 6.6, 6.7, 6.8.1, 6.9, 7.0,
10 and 7.2.

11 Q. Now I'm going to make you count again. How many are
12 there?

13 A. Twelve.

14 Q. Can you pull out the registration for 6.8.1, which is
15 Exhibit 1147?

16 MS. KLIEBENSTEIN: And Mr. Mayleben, can we have
17 that on the screen, please.

18 BY MS. KLIEBENSTEIN:

19 Q. Can you tell the jury which registration this is for,
20 which version?

21 A. So this is version 6.8.1.

22 Q. And I want to talk about the numbers to make sure we all
23 understand what all these numbers mean. So the first
24 number, 6, represents what?

25 A. So this represents the major version of our products

1 that this particular version was based on.

2 Q. And the second number, 8, means what?

3 A. It's a minor version, and the 1 at the end is what's
4 called a maintenance release number.

5 Q. So for someone who's not a software engineer, where
6 would a typical person experience or see different versions
7 of software in their day to day life?

8 A. So your, of course, on computers, you see applications
9 with different numbers, different versions like this. But
10 what's most common for most of us is phones, right? You
11 open your phone, you have an operating system running, you
12 have an IOS under the iPhone or you have Android for the
13 Android phones.

14 So you can see -- on the settings on your phone,
15 you can see the version that this phone is running and
16 sometimes it prompts you, you need to upgrade, you need to
17 update for the latest. And the same thing for the apps that
18 you have already installed on your phone. All of those
19 apps, each one has its own version number and, periodically,
20 their creators of those apps will produce new versions of
21 those apps constantly, so you're going to be prompted -- so
22 you had version 2.5, you need to upgrade to 2.6, and you
23 need to go through that upgrade.

24 Q. And for Blaze Advisor, is there a technical starting
25 point for developing a new version?

1 A. Yeah. So the code that we -- it's true also for almost
2 every product -- every copyright software, we never start
3 from scratch. It's always we start from what you have built
4 previously, which is a base, so from a previous version,
5 it's always a base for whatever we billed next.

6 Q. And so today for Blaze Advisor, in terms of the entire
7 source code over the years, how much does one version vary
8 from another?

9 A. So it depends on their size of the version. So major
10 versions tend to be favored more than minor versions. Minor
11 versions varies fairly little from their previous version.

12 Q. Does FICO store the code for each version?

13 A. Yes.

14 Q. Where?

15 A. So we store them in what's called our source control
16 system or our source versioning system. It's where we store
17 every version of every file in that system, and the system
18 gets -- we call it -- it's called GIT, in the current
19 nowadays, and using this GIT system, it's G-I-T, we can tell
20 what change was made to which file at what time and when.

21 Q. And who has access? Is it open for anyone who comes
22 into FICO to look at the source code?

23 A. No. Only the developers and the people responsible for
24 testing the software have access.

25 Q. And the people who write the code for Blaze Advisor are

1 whom?

2 A. Those are employees of FICO or prior companies that
3 created Blaze software before.

4 Q. Let's put 1147 aside and grab 1149.

5 Can you tell the jury what is this exhibit?

6 A. So this is the registration of copyright for Blaze
7 Advisor 7.0.

8 Q. Can you turn to page 2 and read the title for us?

9 A. So there -- so again, Certificate Of Registration, the
10 title of work, Blaze Advisor 7.0.

11 Q. And who is listed as the author?

12 A. The author is Fair Isaac Corporation.

13 Q. Can you set that aside and pull out 1151.

14 Can you tell us, what does this registration
15 cover?

16 A. This is for Blaze Advisor 7.2.

17 Q. And can you go to the second page?

18 A. Yes. The title is Blaze Advisor 7.2 and the author is
19 Fair Isaac Corporation.

20 Q. And have you been involved in the copyright registration
21 process at FICO over the years?

22 A. Yes, I have.

23 Q. Why does FICO ask the U.S. government for these
24 certificates?

25 A. So this is a mainly for the action for our work. We

1 work hard on our product, and we want to make sure that it
2 has the full protection that's provided by the law.

3 Q. And you authored the code. Are these registrations
4 important to you?

5 A. Yes. It guarantees that their ownership and authorship
6 of the products are tracked and well-respected and the
7 product is used according to its license.

8 Q. Is there any other intellectual property that covers
9 Blaze Advisor?

10 A. Yes. We have two main forms. One is we have patents
11 that cover not the source but it covers their -- you know,
12 the inventions, their innovations within the products. We
13 have about 20 patents that have been registered. I
14 personally worked on six of them. And we have -- as well,
15 we have trademarks as well. It's another form of
16 protection, that protects the name Blaze Advisor.

17 Q. These are heavier. I'm going to bring these to you too.
18 These are marked as Plaintiff's Exhibit 839 through 849 --
19 I'm sorry, 839 through 850. That was easier than I made it.

20 Mr. Marce, can you tell us, what are these
21 exhibits?

22 A. So these actually are supplements to their copyright
23 registration. So they contain extracts of their source that
24 we had at the time, so whenever we register their copyright,
25 we also have to provide to the copyright office some

1 extracts.

2 So in this particular -- on the first one, for
3 instance, so this -- some documents -- some documents that
4 satisfies their provision of the software. There's some
5 compact disc that contains this extract, and then some text
6 printouts of this extract.

7 Q. Mr. Marce, that doesn't look like 3 million lines of
8 code. Can you tell me why?

9 A. Yeah. So we're only required to provide extracts. So
10 again, it's a very small percentage of the entire source
11 code.

12 Q. Mr. Marce, do you have a mouse up there?

13 A. Yes.

14 Q. Let's see if I can do this. I did it.

15 Mr. Marce, you're looking at Plaintiff's Exhibits
16 1152 through 1165.

17 A. Uh-huh, yes.

18 Q. And they're on a computer right here. Can you tell us
19 what we're looking at?

20 A. So these were not the extracts. Those were the entire
21 Java source code that came for each version, so we
22 extracted -- we obtained that from our GIT repository.

23 Q. So these are the versions that are registered, correct?

24 A. Correct.

25 Q. And can you open up -- or can you identify for me

1 Exhibit 1162?

2 A. Yes. So this would be their source code for Blaze
3 Advisor 7.0.

4 Q. And can you open up that folder for me. Thank you.

5 Now what are we looking at?

6 A. So now what we see are there -- there are folders, they
7 are contain files. There are documents within those
8 folders. And those folders map, more or less, to their main
9 components of Blaze Advisor. So we call these four main
10 components, and we have more than four because some of the
11 components require multiple folders.

12 Q. So the components, again, were the rule repository, the
13 IDE, the RMA --

14 A. And the rule server.

15 Q. -- and the rule server.

16 Can you show up -- so let's start with the rule
17 repository, that box in the middle of the last diagram we
18 looked at. Where can I find the code that makes the rule
19 repository?

20 A. So the rule repository is on -- in the folder called
21 "Innovator." I won't go into the details of why it's called
22 that way. And within this folder, first level just say,
23 this is a source for that folder. And then sometimes you
24 have multiple levels of folders. And at some point you're
25 going to see more details of what is inside the repository.

1 So here you have a folder which actually -- where
2 the storage and the versioning is implemented, it's in this
3 repository folder. And we have a template folder, which
4 where the rule template mechanism is implemented. And we
5 have a verifier folder with the verifier logic, which can
6 verify rules, is implemented and so on. So we have
7 different folders for different things.

8 Q. And can you go into one of the folders to show us what
9 the source code looks like?

10 A. Sure. Let's take, for instance, rule template
11 mechanism. So again, there's another layer under that.
12 I'll take the first one. And then one of the main classes
13 in this package is ND template manager, which is this one.
14 The ND template manager is really what controls the whole
15 rule template mechanism, and so it's one of the most
16 important classes in a code.

17 So for every -- so what you see now is a document.
18 In the document you have some lines at the top which are
19 called header. It starts with slash, slash. Those are the
20 header part of their file.

21 Then you have package imports, and I'm going to
22 spare you what the code means. But basically this will
23 present one class out of -- I forgot how many -- it's more
24 than [REDACTED] classes we have. One of the classes is this
25 one, and that will present one key part of the overall

1 system. And this particular class is particularly large.
2 You have definitions of constants, which is what you see at
3 the top. And then you're going to see -- look variables, we
4 saw those entities here. So all this is written. Then you
5 have what's called methods.

6 So all that is returned in the language called
7 Java. I don't know if you're familiar with Java, but that's
8 one of the main languages that started as well in the
9 mid-'90s, and it's still one of the main programming
10 languages used today.

11 Q. Can we can go back out of this file?

12 A. Uh-huh.

13 Q. And can we can back to the main folder for Blaze Advisor
14 7.0?

15 So what we just looked at was -- what we just
16 drilled way down into was just one file of many thousands
17 for the RMA, correct?

18 A. Correct.

19 Q. Can you tell me, how many separate folders are in 7.0?

20 A. Actually, one way to see that is ask it -- ask this
21 machine to give us answer, so I'm going to use that.

22 So there's a total of [REDACTED]. Most of them
23 are classes. So let's say maybe -- maybe [REDACTED]
24 [REDACTED] we have in our system, and there's like [REDACTED]
25 [REDACTED].

1 Q. So [REDACTED] have codes similar to what we just
2 drilled way down into; is that correct?

3 A. Right.

4 Q. And so that's -- that, in total, will be the 3 million
5 that we keep referencing, correct?

6 A. Yeah. So each file is -- some of them are short; some
7 of them are very long. And the total number is about 3-plus
8 million lines of code.

9 Q. And I've always been confused by this. The code excerpt
10 that we just looked at with the text lines, it looks nothing
11 like the visual representations in the rule editor, in the
12 decision table, in the scorecard. Why?

13 A. Because all this Java code does not directly represent
14 the visual. It's actually -- it specifies the concepts
15 represented in a visual. It represents the implementation
16 of what's running on the server side on the back end to
17 support this representation. So we have things like
18 defining relationships between the different parts of
19 decision tables. You have lots behind to make the visual
20 appear.

21 Q. In this code that we're looking at right now, that is
22 what you were a part of writing, correct?

23 A. Correct.

24 Q. And so it's the back end that creates that visual
25 representation?

1 A. Correct.

2 Q. Mr. Marce, I'd like to quickly wrap up your testimony
3 with just a few more questions.

4 Can you tell the jury, as the person who's written
5 the code for Blaze Advisor for 27 years, does FICO consider
6 these copyrighted works to have value?

7 A. Absolutely. This is something that we feel is an
8 important set of protections that we have on the product.
9 People like me, I spent most of our professional life
10 working on this software, so it's very important to us.
11 Having the software be something which is very protected and
12 paid off by people buying and using a product is important,
13 as well it helps to fund the development and the maintenance
14 of this software, it pays us our salary as well.

15 Q. And 27 years in the software space is a long time. Why
16 do you believe Blaze Advisor has lasted, has stood the test
17 of time for 27 years?

18 A. A number of things. One is it was truly remarkable
19 innovation. It was revolutionary when it came out. Nothing
20 was comparable to that.

21 And then we created a very strong team that really
22 had to make the product as strong as it is today. And
23 there's constant demand for making it better and adding
24 things and then making things more modern. And it stood the
25 test of time. We still have several hundred customers --

1 paying customers today, and there's a lot of companies that
2 pays our -- that renews their licenses, and this is
3 something that continues to be successful.

4 Q. And for people like us who aren't software engineers and
5 who don't work at companies that license Blaze Advisor, has
6 it impacted our lives in every way?

7 A. Probably the best is you -- either you have worked in
8 those companies, but if you haven't, you interact with those
9 companies through buying things and getting loans and
10 getting insurance policies and so on.

11 And so lots of our life essentially is enabled by
12 software like Blaze Advisor, which is the -- they're the
13 system or the brain of these applications. They're the ones
14 making the decisions about how to process things, how to
15 process your application, but how to process millions of
16 applications per day.

17 So those kind of rapid and efficient processing
18 would not be possible without a rule management system such
19 as Blaze Advisor.

20 Q. And finally, when most people think of copyrights, they
21 think of musicians or people that write books or people that
22 make movies. Those are artists.

23 You, as someone who's written code that's
24 copyrighted, do you consider yourself an artist, albeit of a
25 different sort?

1 A. I guess. Yes.

2 MS. KLIEBENSTEIN: No further questions. Thank
3 you.

4 THE COURT: Thank you, Ms. Kliebenstein.

5 Which counsel for Federal? Mr. Fleming, what is
6 your best estimate of how long you'll go on cross?

7 MR. FLEMING: Like 25 to 35 minutes. If I did it
8 tomorrow, I'll shorten it by ten.

9 THE COURT: Make sure that microphone is on. I
10 didn't hear the last part of that. Twenty-five to 35
11 minute, you said?

12 MR. FLEMING: Yes.

13 THE COURT: I think we'll break then for the
14 evening. We're five minutes before 5:00. Sometimes if
15 we're close to finishing a witness, we'll finish them and go
16 a little past 5:00, but 25 to 35 minutes and then they get
17 redirect, I'm not going to keep you here until 6:00, okay?

18 So we're in recess for the evening.

19 (Jury leaves courtroom.)

20 (JURY NOT PRESENT)

21 THE COURT: I have a couple of housekeeping
22 matters, just so you know. I'm controlling the monitors up
23 here, and I am switching on and off the jury monitors, not
24 knowing if we're going to have an exhibit that's going to be
25 objected to.

1 What I think may be the easiest way to deal with
2 this is if you're the presenting lawyer and you know there's
3 an exhibit -- there's an objection to the exhibit, just nod
4 at me or something, so I'll keep the jury monitor off until
5 we've resolved the admissibility. If we know it's coming
6 in, I'll leave it on.

7 MS. KLIEBENSTEIN: Did the jury see the exhibits I
8 just showed?

9 THE COURT: Yes, they did.

10 MS. KLIEBENSTEIN: Okay. Thank you.

11 THE COURT: And you didn't see, but I looked over
12 to Federal's table to make sure there was not an objection
13 coming, okay?

14 So do we have the exhibit list with the -- do we
15 know what is clearly objected to and what's not?

16 THE CLERK: Yes.

17 THE COURT: So we'll be looking at that too. But
18 just be aware that unless I know that it's been admitted,
19 I'm not turning that on until I get some kind of
20 confirmation, okay?

21 MS. KLIEBENSTEIN: Sure. And I have one further
22 question, and I asked this a little bit with the joint
23 exhibits. Even though we're not moving --

24 THE COURT: Those are admitted. I'm sorry.

25 MS. KLIEBENSTEIN: Perfect.

1 THE COURT: Have I confused everyone, or does
2 everyone follow what I'm saying?

3 MS. KLIEBENSTEIN: Yes, but I have another issue
4 too.

5 THE COURT: Come on up to the podium, if you
6 would.

7 Mr. Marce, you can step down if you'd like.

8 MS. KLIEBENSTEIN: He's interested in what we're
9 doing.

10 THE COURT: You can stay there too.

11 MS. KLIEBENSTEIN: The source code, highly
12 confidential - top secret, is on here (indicating). We did
13 not move this in the courtroom because only minor excerpts
14 were shown and the trade secrets weren't revealed. However,
15 it's going to stay on here.

16 How would Your Honor like to handle this from now
17 until the jury deliberates?

18 THE COURT: Do you plan to use it again?

19 MS. KLIEBENSTEIN: Nobody wants to see this again.

20 THE COURT: I didn't say that.

21 MS. KLIEBENSTEIN: Maybe Terry does.

22 THE COURT: If nobody plans to use it again, we
23 will take custody of it.

24 Is the computer itself marked, by any chance?

25 MS. KLIEBENSTEIN: No, but we can give it an

1 exhibit number and mark the computer itself.

2 THE COURT: Let's give it an exhibit number and
3 mark the computer.

4 Now, we can take custody of it, I just said, but
5 you can also retain custody if that's better for your
6 clients, if you're more concerned that way.

7 Do you have any objection to that? Okay. Why
8 don't we do it that way. Just make sure to have it here for
9 when they deliberate.

10 Anything else, Ms. Kliebenstein?

11 MS. KLIEBENSTEIN: No, Your Honor.

12 THE COURT: Okay. Anything for Federal?

13 MR. FLEMING: No, Your Honor.

14 MS. GODESKY: No, Your Honor.

15 THE COURT: Thank you, everyone. We are in
16 recess.

17 (Court adjourned at 4:59 p.m.)

18 * * *

19 I, Paula K. Richter and Maria Weinbeck, certify
20 that the foregoing is a correct transcript from the record
21 of proceedings in the above-entitled matter.

22

23 Certified by: s/ Paula K. Richter

24 Paula K. Richter, RMR-CRR-CRC
25 Maria Weinbeck, RMR-FCRR